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Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES

v.

ALI AL-TIMIMI

Case No. cr-04-385

Hon. Leonie M. Brinkema

**DEFENDANT DR. ALI AL-TIMIMI'S MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY OF UNDISCLOSED MATERIAL
INTERCEPT EVIDENCE CAPTURED PURSUANT TO FOREIGN
INTELLIGENCE SURVEILLANCE ACT**

Defendant Dr. Ali al-Timimi respectfully moves this Court, pursuant to Federal Rule of Criminal Procedure 16 and *Brady v. Maryland* and its progeny, to compel the government to produce previously requested and unlawfully withheld material intercept evidence captured pursuant to the Foreign Intelligence Surveillance Act ("FISA"). 50 U.S.C. 1801 et seq. Since the last hearing in this remand, defense counsel has obtained documents that confirm that the Justice Department's prosecution of the so-called "Virginia Jihad" conspiracy, a conspiracy which Dr. al-Timimi was accused of leading, was based on FISA surveillance that was conducted prior to 2003. This information validates the core concern of the Court of Appeals for the Fourth Circuit when it remanded this case before this Court in 2006, because it contradicts the government's fundamental assertions that (1) its investigation and surveillance of Dr. al-Timimi began only in 2003, (2) it possesses no FISA intercepts material to Dr. al-Timimi's case that pre-date 2003, and, most significantly, (3) that it has provided Dr. al-Timimi with all the discovery to which he is constitutionally and statutorily entitled.

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Throughout this remand, defense counsel has objected that the government's position with respect to its discovery obligations is fatally flawed and based on a fundamental misreading of Rule 16, as well as the scope of this remand. *See, e.g. Dkt. No. 252*. Since the last hearing in this case, defense counsel has uncovered additional recently declassified and released documents that point to an even broader array of withheld evidence in this case. In a series of recent motions, the defense has laid out this additional evidence, which encompasses virtually every aspect of federal criminal discovery, from exculpatory information, to information rebutting witness testimony, to potential undisclosed witnesses. The government has met these motions with the same extreme position that it has asserted throughout this remand: that it alone determines what is material and what will be disclosed to the defense.

The withholding of pre-2003 material FISA surveillance may have not only denied the defense exculpatory evidence, but also evidence that would have been critical to the defense in the identification and questioning of witnesses. Additionally, this information may have allowed for or supported challenges by the defense to the admission of certain evidence or additional trial testimony.¹

I. PROCEDURAL HISTORY

In April 2006, several months after Dr. al-Timimi's conviction before this Court on charges that he induced young men to travel abroad to engage in violent "jihad" against the United States, the Court of Appeals for the Fourth Circuit remanded this case to this Court for additional proceedings after reports surfaced of previously undisclosed surveillance programs

¹ Such motions to suppress evidence can be made pursuant to 50 U.S.C. 1806(e), which permits a defendant to suppress surveillance evidence "that was not made in conformity with an order of authorization or approval." *Id.* at (e)(2) This provision also expressly allows for post-trial motions when a defendant was "not aware of the grounds of the motion" prior to his trial. *Id.* at 1806(e).

covering individuals material to the case against Dr. al-Timimi. During this remand, the Court has examined the scope of previously withheld surveillance evidence within the context of Rule 16 and *Brady v. Maryland* and its progeny, to determine if a new trial is warranted. *Dkt. No. 183, CIPA Hr'g Tr.* at 31:9-14, July 21, 2006.

The Court has made clear on several occasions that the scope of the remand is not limited to intercepts by any one government agency or under any particular surveillance program, and has insisted that the government produce all undisclosed evidence in its possession to which Dr. al-Timimi is statutorily and constitutionally entitled:

I'll say it again for the record that the United States government is still one government, and if one branch of the government, especially when they are aware that there's an ongoing civilian criminal prosecution going, and they would be in possession of information that would be relevant to requests for discovery, then the United States government has an absolute obligation to turn that over to the prosecutors and at least bring it to the Court's attention in a CIPA or other type of sealed proceeding so that there can be a judicial evaluation as to whether or not that information must, in fact, be turned over to the defendant.

Dkt. No. 272, Hr'g Tr. at 9:18-10:3, Oct. 23, 2008; *see also United States v. Beckford*, 962 F. Supp. 780, 785 (E.D. Va. 1997) (citing *Kyles v. Whitely*, 514 U.S. 419 (1995); *United States v. Agurs*, 427 U.S. 97 (1976)) (“In the discharge of its obligations under *Brady*, the Government must actively search out the requested material in its files and in the files of related agencies reasonably expected to have possession of such information.”); *Banks v. United States*, 920 F. Supp. 688, 692 (E.D. Va. 1996) (“The United States Attorney is accountable for the information gathered by the various arms of federal law enforcement in the course of an investigation.”).

II. GOVERNMENT REPRESENTATIONS TO THIS COURT CONCERNING ITS INTERCEPTION OF DR. AL-TIMIMI'S TELEPHONE AND E-MAIL COMMUNICATIONS

Throughout Dr. al-Timimi's trial and subsequent appellate remand, the government has insisted that its investigation and surveillance of Dr. al-Timimi began only in 2003, and, as a logical consequence, that the government possesses no material FISA intercept evidence that pre-dates that time period. Although the government provided Dr. al-Timimi FISA-related pre-trial discovery involving Dr. al-Timimi and alleged co-conspirators, current defense counsel is aware of no such FISA-related discovery provided to Dr. al-Timimi that pre-dates 2003.²

At trial, the government and defense stipulated that the government had intercepted Dr. al-Timimi's communications during most of 2003:

The United States and the defendant hereby stipulate and agree that the defendant was subject to court-authorized electronic surveillance for a significant portion of 2003. During that same period, several thousand of the defendant's telephone calls were intercepted. In addition, the government obtained an extensive number of defendant's email messages during that same period.

Stipulation No. 60, Gov't Ex. 12-60 (Apr. 13, 2005) (Exhibit A).

In addition, FBI Special Agent Wade Ammerman, who helped lead the investigation of Dr. al-Timimi, affirmatively testified before this Court that the investigation of Dr. al-Timimi began only in February of 2003. *Dkt. No. 152, Trial Tr. Vol. 5* at 1337:5-6, Apr. 11, 2005; *see*

² Current defense counsel has been unable to obtain a definitive index of all prior evidence revealed to the defense, either in the SCIF or in unclassified form. Requests were previously made to both the prosecution and Court Security staff for such records. Defense counsel has also reached out to prior counsel to confirm that they have no recollection of being provided any FISA material that pre-dated 2003. Prior lead counsel for Dr. al-Timimi's trial team confirmed that he has no recollection of pre-2003 FISA records being shared with the defense.

also *Dkt. No. 220, Hr'g Tr.* 38:9-11, Jan. 16, 2007 (Court stating that “the government insists that there was no material investigation of Timimi until 2003”).³

In a November 2, 2004 pre-trial discovery letter to the government, Dr. al-Timimi's trial counsel made the following request:

I understand from conversations with prior counsel that Mr. al-Timimi has been the subject of various FISA warrants for some extended period. I am requesting that the tapes or transcripts of any tapped phone conversations, taps of any sort, and other fruits of any FISA warrants or other non-FISA warrants – e.g. mail covers or pen registers – that relate to Mr. al-Timimi be produced. I understand that this may be a large quantity of information and that there may be classification issues with respect to these items but they are plainly discoverable.

Discovery Letter #0 at 1, Nov. 2, 2004 (Exhibit B)

The government, in response, indicated that it would provide FISA discovery with respect to Dr. al-Timimi and certain other individuals, but made clear that it was withholding intercepts that appeared to be covered by Rule 16:

3. You requested the fruits of “any FISA warrants or other non-FISA warrants...that relate” to your client. Unless these fruits are statements of your client, are exculpatory, or are items we intended to use at trial, I am unaware of any authority for production of such information. We are producing to you the “fruits” that consist of your client's statements. If you notify me of the appropriate authority for the production of other such “fruits,” I will promptly revisit this issue.

4. You requested what I understand to be prior statements and fruits of FISA warrants with respect to any of Al-Timimi's co-conspirators. I expect to have available for you next week cd-roms

³ Notably, these assertions are contradicted by Paul McNulty, former Deputy Attorney General of the United States and former U.S. Attorney for the Eastern District of Virginia, who in 2003 told the media that the Virginia Jihad investigation “began in 2000, centered in suburban Washington, and then extended into Fredericksburg, Virginia, Philadelphia, Pakistan, India and Afghanistan.” Kelli Arena, Kevin Bohn & Terry Frieden, *Feds Charge 11 Men With Conspiracy in Overseas Jihad*, CNN.com, (June 27, 2003, 8:25 PM), <http://www.cnn.com/2003/US/06/27/terror.arrests>.

containing all of the phone conversations and e-mails captured pursuant to FISA or other authority for Royer, Khan, Hammad, Caliph, Hamdi, Chapman, Kwon, Hasan, Surratt, and Aatique. Such [sic] of this information that was delivered from FISA likely will still be in classified form so that you will have to obtain it from [the court security officer]. That being said, I am unaware of any authority for production of such other FISA related information that is not exculpatory. As noted above, if you notify me of the appropriate authority for the production of other such “fruits,” I will promptly revisit this issue.

Discovery Letter #3 at 1-2, Nov. 12, 2004 (Exhibit C).

In a December 28, 2004 discovery letter, the government confirmed that it was providing CD-ROMs “containing emails and phone calls of other conspirators in this case . . . [that] were captured by FISA.” *Discovery Letter #8* at 1, Dec. 28, 2004 (Exhibit D). It also outlined its intention to provide 33 CDs to defense counsel, which contained “material involving” alleged co-conspirators Masaud Khan, Muhammed Aatique, Seifullah Chapman, Randall Royer, and Ibrahim Hamdi. *Id.* The letter also confirms that defense counsel “received the cds with the telephone calls and emails that were captured under the FISA surveillance over Timimi.” *Id.* The only references to specific FISA intercepts in this letter are to calls made in early 2003. *Id.*

In a January 28, 2005 pre-trial hearing, the government confirmed to this Court that the defense counsel had been given, although not the entire “universe of tapes on which [Dr.] al-Timimi’s voice has been captured,” but at minimum “everything that’s relevant or exculpatory or something that we haven’t reviewed enough to know whether it’s relevant or exculpatory.” *Dkt. No. 145, Hr’g Tr.* 8:11-16, 10:3-14, Jan 28, 2005. The government also indicated that, to the extent it possessed intercepts between Dr. al-Timimi and one other individual that it deemed irrelevant or immaterial, it would have no problem with the Court performing an *in camera* review of such conversations. *Id.* at 10:15-25.

During the same pre-trial hearing, defense counsel objected to the Court that there were obvious temporal gaps in the surveillance that the government had provided:

[T]he universe of conversations only covers a specific period of time of approximately a year. It is not a universe that encompasses all the conversations from September 11 of 2001 until near the date of this indictment. So in addition to it being a needle in a haystack, there may be other haystacks that we have not been given access to.

Id. at 9:14-19. Thus, the government's provision of FISA-related discovery to Dr. al-Timimi was limited in temporal scope and was subject to unilateral materiality determinations that, in light of evidence discussed below, were unlawful.

III. EVIDENCE OF PRE-2003 MATERIAL FISA INTERCEPTS

Through a review of documents in the National Archives and Records Administration ("NARA") 9/11 Commission-related files, as well as documents related to the trials of Dr. al-Timimi's alleged co-conspirators, defense counsel has confirmed that the government possesses FISA-derived e-mail intercepts and, in all likelihood, telephone intercepts of Dr. al-Timimi and other alleged co-conspirators that were not disclosed to Dr. al-Timimi prior to his trial.

A. 9/11 Commission Memoranda for the Record by FBI Personnel

Through its own search of NARA's 9/11 Commission electronic database (*see Dkt. No. 301* at 9-10), as well as supplementary online research, defense counsel has obtained multiple 9/11 Commission "Memoranda for the Record" ("MFRs") in which FBI personnel acknowledge that *pre-2003* FISA surveillance formed the basis of the criminal investigation and eventual prosecution of the so-called Virginia Jihad conspiracy. As Dr. al-Timimi was the alleged "ringleader" and inspiration for the conspiracy, it is implausible that none of these pre-2003 intercepts were material to the preparation of Dr. al-Timimi's defense under Federal Rule of Criminal Procedure 16. *See Dkt. No. 156, Trial Tr. Vol. 9* at 2274:24 - 2275:2 Apr. 18, 2005 (implying to jury that Dr. al-Timimi was "ringleader" of group of local men traveling abroad to

engage in violent jihad). Such FISA surveillance represents core discoverable material, and should have been disclosed to Dr. al-Timimi prior to his trial.

In a 2003 MFR, Duncan Wainwright, Assistant Division Counsel for the FBI Washington Field Office,⁴ acknowledged that the “Virginia Jihad” prosecution grew out of the once-forbidden practice of providing FISA-derived intelligence to Federal prosecutors for the purposes of developing criminal cases. *9/11 Commission Memorandum for the Record, Interview of Duncan Wainwright, Ass’t Div. Counsel, WFO, FBI* at 4 (Aug. 13, 2003) (Exhibit E). According to Wainwright, this information-sharing began even before a November 18, 2002 opinion by the United States Foreign Intelligence Court of Review, which held for the first time that FISA did not require the government to show the FISA court that its primary purpose in conducting electronic surveillance was *not* criminal prosecution. *Id.* (“Even before the FISA Court of Review opinion, however, the FISC had issued an order approving a request by the Terrorism and Violent Crime Section (now, the Counterterrorism Section) of the Criminal Division to have their attorneys review the FBI’s Form 199 (terrorism intelligence case) investigation files for the purpose of identifying any criminal violations that suspected terrorists could be charge [sic] with.”); *see generally, In re Sealed Case*, 310 F.3d 717 (FISA Ct. Rev. 2002). Wainwright states that, once “the Wall” between intelligence and criminal cases was formally abolished by the FISA Court of Review, federal prosecutors continued to review FISA surveillance to “identify ‘any violations,’” and, significantly, admits that the criminal prosecution of the “Virginia Jihad” case *was one of only a few criminal cases resulting from the sharing of such FISA information:*

⁴ Mr. Wainwright has attended hearings during this very remand. *See Dkt. No. 183, Hr’g Tr.* 3:12-14, July 21, 2006.

When the Wall finally came down after the FISA Court of Review's [Nov. 18, 2002] opinion, [Attorney General] Ashcroft established a policy to have AUSAs come over and review the FBI's 199 files to identify "any violation." *The idea was to use every tool available. Wainwright said that not many criminal cases came out of this effort, but the Virginia Jihad case did.*

Exhibit E at 4 (emphasis added).

Duncan Wainwright's statements are corroborated by a second declassified 9/11 Commission MFR, which reflects an interview with a Washington Field Office FBI agent whose name is redacted. *9/11 Commission Memorandum for the Record, Interview of FBI Washington Field Office Special Agent* (July 31, 2003) (Exhibit F). The Special Agent also speaks in extensive detail about the fall of "the Wall" between intelligence and criminal cases, and details the involvement and supervision by Duncan Wainwright in the process of sharing intelligence with federal prosecutors. *Id.* at 4, 5. The unidentified Special Agent specifically states:

Another important change after 9-11 was that Assistant United States Attorneys ("AUSAs") "can now review 'intell' files" for potential criminal violations and discuss those files with agents. *AUSAs from the Eastern District of Virginia came over to the WFO and reviewed "intell" files in late 2002 or early 2003. They reviewed "all information in the files," including the FISA information "all the way back to pre-PATRIOT Act cases."*

Id. at 5 (emphasis added).

Taken together, the two MFRs confirm that the Virginia Jihad prosecution was the direct consequence of FISA evidence that originated at least as early as 2002, and likely even earlier. Current counsel can find no such FISA evidence, however, referenced in Dr al-Timimi's discovery record. This evidence would obviously have a direct bearing not only on the allegations against Dr. al-Timimi, but also the trial testimony of some of his alleged co-conspirators, as well as the trial testimony of government investigators like FBI Special Agent Ammerman, whose representations to the Court in his affidavit and trial testimony have already

been called into question. *See Dkt. No. 301*. Indeed, these MFRs cast into serious doubt Special Agent Ammerman's sworn statements in his 2003 affidavit for a search warrant on Dr. al-Timimi's house, when he informed this Court that he had never heard of Dr. al-Timimi until tips from confidential informants that, by apparent coincidence, began coming in to the Washington Field Office only one day after the November 18, 2002 FISA Court of Review Opinion. *See Dkt No. 301* at 14, and Exhibit J to that pleading. Recent public disclosures have confirmed that the government has in the past created "parallel constructions" in affidavits to hide the fact that investigations had their origins in warrantless surveillance.⁵

Moreover, the fact that Assistant United States Attorneys from the Eastern District of Virginia are singled out as having examined pre-2003 FISA intelligence means that Dr. al-Timimi's prosecutors cannot claim to have been unaware of this information sharing, or the existence of this pre-2003 FISA surveillance. The defense notes, however, that even a lack of awareness on the part of "line" prosecutors would not have relieved the government of its discovery obligations. *Banks*, 920 F. Supp. at 692 ("The United States Attorney is accountable for the information gathered by the various arms of federal law enforcement in the course of an investigation.").

⁵ In a recent investigative report by Reuters, agents from the DEA's Special Operations Division, which partners with the FBI and other agencies, admitted that they have engaged in a procedure called "parallel construction," whereby agents create a false investigative narrative in affidavits in order to hide from the Court the fact that criminal investigations had their genesis in NSA intercepts that are not lawfully permitted to be used in criminal investigations. One former agent said the process "was just like laundering money – you work backwards to make it clean." A senior DEA official also told Reuters that the practice was "decades old." The report also cites several current and former prosecutors as opposing the practice, because, in the words of one prosecutor, "it can lead to all kinds of problems with discovery and candor to the Court." *See John Shiffman & Kristina Cooke, U.S. Directs Agents to Cover Up Program Used to Investigate Americans*, Reuters.com (Aug. 5, 2013, 3:25 PM) <http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805>

B. Evidence of Material Pre-2003 FISA Surveillance From NARA 9/11 Commission Records.

In addition to the MFRs, defense counsel has found other evidence of pre-2003 FISA surveillance of Dr. al-Timimi and his alleged co-conspirators in the NARA 9/11 Commission files. In its recent Memorandum in Support of its Motion to Compel Discovery Related to Anwar al-Aulaqi, defense counsel described the provision by NARA staff of a chart containing basic descriptions of 9/11 Commission-related documents in which Dr. al-Timimi is mentioned. *See Dkt. No. 301* at 9-10. Because the underlying documents remain classified, defense counsel is unable to view them. A reading of the chart alone, however, suggests that there were material investigations, including FISA “intelligence” investigations, prior to 2003 which were not revealed to the defense.⁶ In addition, the sheer number of occasions on which Dr. al-Timimi’s name appears in pre-November 2002 Washington Field Office documents makes Special Agent Ammerman’s sworn statements about the origins of the investigation, and his lack of pre-November 2002 knowledge of Dr. al-Timimi, even more suspect. As illustrative examples, the defense respectfully draws the Court’s attention to the following:

- A December 6, 2000 memorandum from the FBI’s Detroit Field Office⁷ in which Dr. al-Timimi’s name is apparently mentioned.
- An August 14, 2001 memorandum from the FBI’s Detroit Field Office reflecting a 199 (or terrorism intelligence)⁸ case in which Dr. al-Timimi’s name is mentioned.⁹

⁶ Indeed, the NARA chart shows that Dr. al-Timimi appears to have drawn the interest of non-law enforcement agencies as well. A December 15, 2001 cable by the State Department also apparently references Dr. al-Timimi.

⁷ Defense counsel has confirmed that the abbreviation “DE” in an FBI case file number stands for the Detroit Field Office. *See* FBI Office Abbreviations, http://negleyvfbi.com/pdf_files/FBI_Office_Abbreviations.pdf

⁸ Duncan Wainwright’s 9/11 Commission MFR confirms that Class 199 FBI cases were “terrorism *intelligence*” cases and Class 265 cases were “terrorism *criminal*” cases. *See* Exhibit E at 4 (emphasis in original).

⁹ The date for this document does not appear on the chart that is provided to the Court. Defense counsel has confirmed the date, however, by cross-checking the entry against a longer

- A September 12, 2001 FBI Counterterrorism memorandum in which Dr. al-Timimi's name is mentioned.
- A July 2, 2002 memorandum from the FBI's Seattle Field Office, reflecting a 199 terrorism intelligence case, in which Dr. al-Timimi and alleged co-conspirator Seifullah Chapman are apparently mentioned.
- An August 22, 2002 Washington Field Office memorandum reflecting a criminal terrorism case in which Dr. al-Timimi's name is mentioned.
- A September 27, 2002 Washington Field Office memorandum reflecting a criminal terrorism case, in which both Dr. al-Timimi and Anwar al-Aulaqi are mentioned.
- An October 18, 2002 field memorandum from the Washington Field Office in which Dr. al-Timimi and alleged co-conspirator Randall Royer are mentioned.
- An Oct. 23, 2002 Washington Field Office memorandum in which Dr. al-Timimi and Anwar al-Aulaqi are both mentioned.¹⁰

See NARA Chart of Documents (Exhibit G)

C. Other Evidence of Pre-2003 FISA Surveillance on Dr. al-Timimi and His Alleged Co-conspirators

In addition to the 9/11 Commission-related documents, Dr. al-Timimi has obtained other publicly available documents indicating that it is highly unlikely that the government possesses no material FISA surveillance information that pre-dates 2003. This includes areas where the defense made substantial and repeated objections during trial. One such example is a critical email used by the prosecution at trial, cited in closing arguments, and ultimately cited by the Court itself.

During Dr. al-Timimi's trial, the government introduced against him Exhibit 4G7 (a copy of which is attached hereto as Exhibit H), a June 19, 2001 e-mail from the mysterious yahoo address "Paint Ballaz pballaz@yahoo.com" that purportedly exhorted several of Dr. al-Timimi's alleged co-conspirators to engage in jihad. *See Dkt. No. 154, Trial Tr. Vol. 7 at 1799:3-25 (Apr.*

version of the chart that was also provided to defense counsel. Because of its length and the relative difficulty of interpreting it, the longer chart is not being submitted to the Court. Defense counsel, will, however, provide the Court this longer chart if it so requests.

¹⁰ This document is one of the subjects of Dr. al-Timimi's recently filed Motion to Compel Discovery Related to Anwar al-Aulaqi. *Dkt. No. 300*.

13, 2005); *see also*, Exhibit H. Although the government argued at trial that this e-mail was actually sent by Dr. al-Timimi (*Dkt. No. 156, Trial Tr. Vol. 9* at 2270:9-2272:4 (Apr. 18, 2005)), Dr. al-Timimi vigorously denied this. *Id.* at 2271:16-17. Over later defense objections, the government was allowed to use this email despite the lack of proof as to who sent it. *Id.* at 2271:18-22.

The government never stated that Exhibit 4G7, which pre-dated the period in which the government acknowledged Dr. al-Timimi was under FISA surveillance, was in fact captured through FISA surveillance, and the version of the e-mail that was introduced against him at trial bears none of the traditional markings that it had been captured through FISA. *See* Exhibit H. However, in the 2004 trial of alleged co-conspirator Masaud Khan, when Exhibit 4G7 and other e-mails in the government's "4G" series were introduced by the government, AUSA Kromberg, who was also prosecutor in Khan's case, revealed to this Court that some of the 4G e-mails came to the attention of the government "originally through a FISA," and were only later obtained directly from Yahoo!. *Tr. of Bench Trial, Vol. 1* at 187:19-25, 190:1-8, 192:3-5, *United States v. Masaud Khan, et al.*, E.D. Va. Crim. No. 03-296-A, , (Feb. 9, 2004) (cited excerpts are attached as Exhibit I). None of these documents in the 4G series bore markings that they had been FISA derived. (*See, e.g.*, Government Exhibits 4G4, 4G5 and 4G6 as submitted in the *Khan* proceeding, attached hereto as Exhibit J). Later in that same trial, Special Agent John Wyman, who also testified in Dr. al-Timimi's trial, specifically acknowledged that Exhibit 4G4, a December 2001 e-mail from alleged co-conspirator Randall Royer, was in fact FISA-derived. *Tr. of Bench Trial, Vol. VIII* at 2069:15-19, 2070:4-9, *United States v. Masaud Khan, et al.*, E.D. Va. Crim. No. 03-296-A, (Feb. 19, 2004) (cited excerpts are attached as Exhibit K).

The defense has tried to confirm whether the 4G series, and particularly Exhibit 4G7, was FISA derived. This search recently led to a website run by a Steve Emerson, a controversial expert who has been criticized for extreme positions on national security cases.¹¹ Emerson's website features versions of Exhibits 4G5 and 4G6, e-mails that are dated April and June 2001 respectively, which feature Dr. al-Timimi's alleged co-conspirators. *See Attachments to Statement of Facts* at PDF p. 24-25 of 61, http://www.investigativeproject.org/documents/case_docs/1476.pdf (copies of Exhibits 4G5 and 4G6 are attached hereto as Exhibit L). Notably, unlike the versions introduced at Khan's trial, these documents are clearly stamped "FISA-derived." *Id.*

These sources support the view that the entire "4G" series of exhibits was FISA-derived. If Exhibit 4G7 was in fact FISA-derived, and Dr. al-Timimi had known that the government had FISA surveillance from this same period, this information could have been used by the defense to argue in more detail that Dr. al-Timimi was not the source of the critical email. It would have also allowed for a more substantial examination of government witnesses on the point. The use of an exhibit without proof of the sender was already quite controversial at trial; if the government had contemporary emails and surveillance from this source, the information was obviously material and directly related to the challenge made by the defense both at trial and after trial.

IV. THE GOVERNMENT WAS REQUIRED TO DISCLOSE FISA EVIDENCE RELATED TO DR. AL-TIMIMI UNDER CONTROLLING LEGAL STANDARDS

Any FISA surveillance on Dr. al-Timimi or on his alleged co-conspirators, in particular surveillance conducted during the period of time covered by Dr. al-Timimi's indictment,

¹¹ Wesley Yang, *The Terrorist Search Engine*, New York Magazine, (Dec. 5, 2010), available at <http://nymag.com/news/features/69920/>. Notably, the government's expert in the case against Dr. al-Timimi, Evan Kohlmann, received much of his expertise while working for a think tank founded by Emerson. *Id.*

September 2001 onwards, represents core discoverable material to which Dr. al-Timimi was statutorily and constitutionally entitled under Federal Rule of Criminal Procedure 16 and *Brady v. Maryland* and its progeny.

Under the Fourth Circuit's application of *Brady v. Maryland* and its progeny, Due Process requires that the government disclose "evidence favorable to an accused upon request ... where the evidence is material either to guilt or to punishment." *United States v. Caro*, 597 F.3d 608, 619 (4th Cir. 2010). Of particular importance to this remand, the Supreme Court subsequently extended the *Brady* disclosure rule to material impeachment evidence. *Giglio v. United States*, 405 U.S. 150, 154 (1972); *United States v. Fisher*, 711 F.3d 460, 471 (4th Cir. 2013).

Perhaps even more importantly, the evidence in this motion was requested by Dr. al-Timimi before trial, bringing it squarely within the purview of the much broader discovery provisions of Rule 16(a)(1)(E)(i), which requires the government to make available any requested items that are "material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E)(i); *Caro*, 597 F.3d at 620-21 (agreeing that Rule 16 is "much broader" than *Brady*, and provides the "minimum amount of pretrial discovery granted in criminal cases"). "[E]vidence is material as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *Caro*, 597 F.3d at 621 (quoting *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993)).¹² As noted above, "materiality" under Rule 16 is far broader than "materiality" under

¹² This Court has already held that Rule 16 is applicable to discovery requests during this remand:

[W]ho determines what's relevant? I mean, again, that's why we have an adversary system. . . . The rule requires that the appropriate categories of information be turned over to defense

Brady. Caro, 597 F.3d at 645 n.15 (“we stress that “materiality” in Rule 16(a)(1)(E)(i) differs from “materiality” under *Brady*). As the defense has repeatedly argued to this Court, the government must first establish what evidence was withheld pre-trial, and must not engage in post-trial rationalizations or the use of hindsight to justify the non-disclosure of material evidence. The evidence must be reviewed under the broad standard for disclosure that existed pre-trial.¹³

As the Court is well aware, the fundamental dispute in this remand has been whether the government is permitted to make unilateral declarations as to the materiality of requested evidence, and whether the government can produce discovery without, at minimum, disclosing the standard of materiality it is applying. In this instance, there can be no serious dispute that surveillance was examined by AUSAs for the explicit purpose of “identifying violations,” and which admittedly formed the basis for the prosecution of the conspiracy which a defendant was accused of leading, “would play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.” *See id; cf. United States v. Spanjol*, 720 F. Supp. 55, 57 (E.D. Pa. 1989)(denying defendants’ pre-trial access to FISA evidence only when government attorneys “stated in an affidavit that they have

counsel. Then they’ll rummage through it. It may be in their eyes important to some theory of defense that, you know, you might not appreciate, I might not appreciate, but I thought that one of the pretty strong requirements of rule 16 . . .

Dkt. No. 220, Hr’g Tr. 43:1-9 (Jan. 16, 2007). Although FISA sets forth its own standards for disclosure separate from Rule 16, it is worth noting again that after 2001 FISA information was for the first time overtly allowed to form the basis of criminal investigations and prosecutions.

¹³ A latter question may arise as to whether “the pretrial disclosure of the disputed evidence would have enabled the defendant significantly to alter the quantum of proof in his favor.” *Caro*, 597 F.3d at 621 (quoting *United States v. Ross*, 511 F.2d 757, 763 (5th Cir. 1975)). That appellate standard for a violation of Rule 16 only occurs after the establishment of the body of evidence withheld by the government. *Id.* Moreover, when that secondary question is raised, it is done so through an adversarial process, and not by an opaque determination of the government.

made no direct, indirect or derivative use of any of the surveillance materials at issue in this case,” and only after *in camera, ex parte* review).

The government may, of course, claim that prior surveillance at issue in this motion did not mention Dr. al-Timimi or the underlying allegations or conspiracies. The government has itself, however, maintained that the Court should allow an extremely broad interpretation of relevance in this case. This is evident in its use of the “Abu Khalid” evidence that was the subject of one of Dr. al-Timimi’s recent motions to compel discovery. (*See* Dkt. No. 305) Indeed, the government has insisted that Dr. Al-Timimi’s statements *to anyone at any time* were material when they dealt with 9-11, terrorism, disasters, his views of Islam, or the United States generally. This previously broad view of materiality was expressed in the Government’s November 4, 2004 Response to Defendant’s Pretrial Motion:

At the least, Timimi’s statement regarding the Space Shuttle is relevant and material to the proof against him because it shows his motive to counsel his followers to aid the Taliban, levy war against the United States. Similarly, it is relevant and material because it further shows that his advice and counseling to Kwon, Hasan, Khan, Royer, and the others was not inadvertent or made by mistake, and it was not misheard by his listeners.

Dkt. No. 16 at 11 n.4.

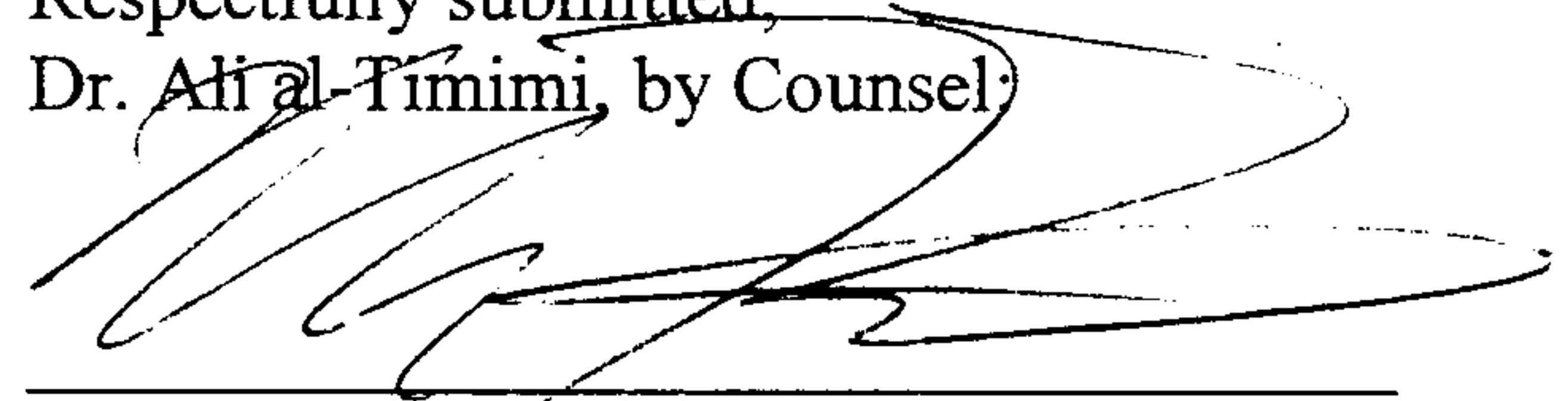
The first step, however, is for the government to disclose the full range of previously withheld FISA evidence that relates to Dr. al-Timimi or the underlying facts or associations referenced in his indictment and trial, and most certainly any FISA surveillance that was examined by prosecutors to develop the criminal case against Dr. al-Timimi or any other members of the so-called “Virginia Jihad” conspiracy.

V. CONCLUSION

Dr. al-Timimi, therefore, asks that the Court compel the government to disclose all FISA surveillance that was used in the investigation of Dr. al-Timimi or his alleged co-conspirators or the so-called Virginia Jihad conspiracy. In light of the prior withholding of such evidence, this production should also include an index of all potentially relevant FISA material, to afford the Court and the parties a complete record of the scope of surveillance evidence in the possession of the government.

Dated: September 6, 2013

Respectfully submitted,
Dr. Ali al-Timimi, by Counsel



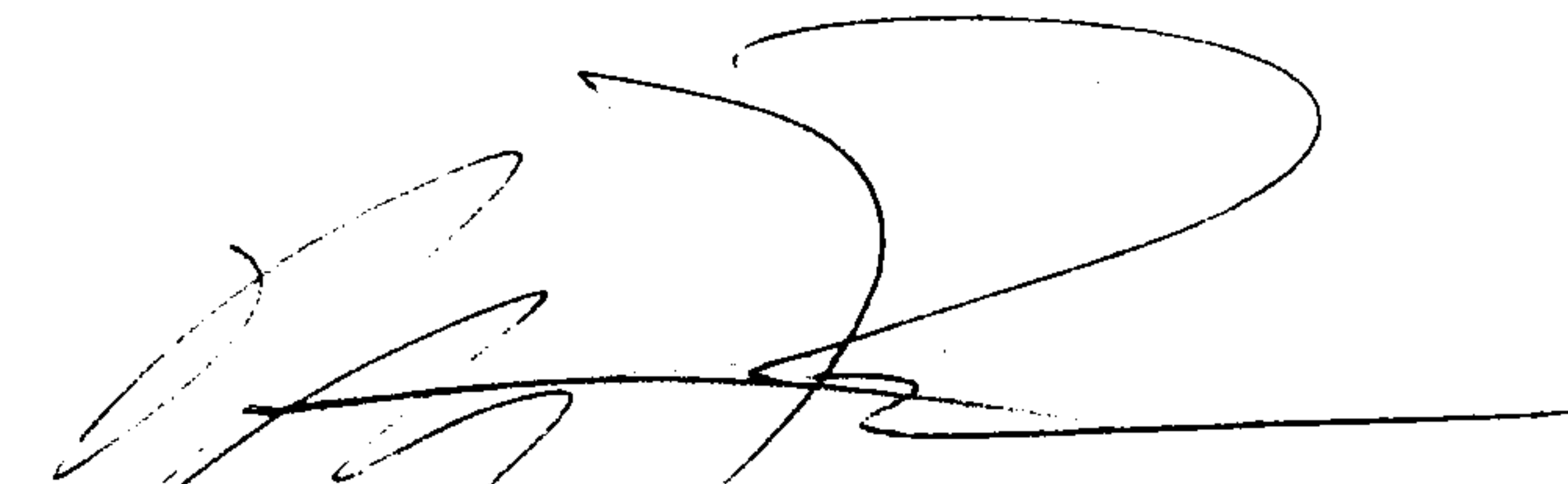
Vishant Manu Krishnan (VSB # 82308)

Jonathan Turley (*pro hac vice*, lead counsel)
2000 H St., N.W.
Washington, D.C. 20052
(202) 994-7001 (phone)
(202) 994-9811 (facsimile)

Vishant Manu Krishnan (VSB # 82308)
Bryan Cave LLP
1155 F Street, NW, Suite 700
Washington, D.C. 20004
(202) 508-6000 (phone)
(202) 508-6200 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2013, the foregoing was given to the court security official in compliance with prior court orders for filing and delivery to both the Court and to opposing counsel.

A handwritten signature in black ink, appearing to read 'Vishant Manu Krishnan', is written over a horizontal line.

Vishant Manu Krishnan (VSB # 82308)
Counsel for Dr. Ali al-Timimi

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

ALI AL-TIMIMI

)
)
)
)
)

Criminal No. 1:04cr385

The Hon. Leonie M. Brinkema

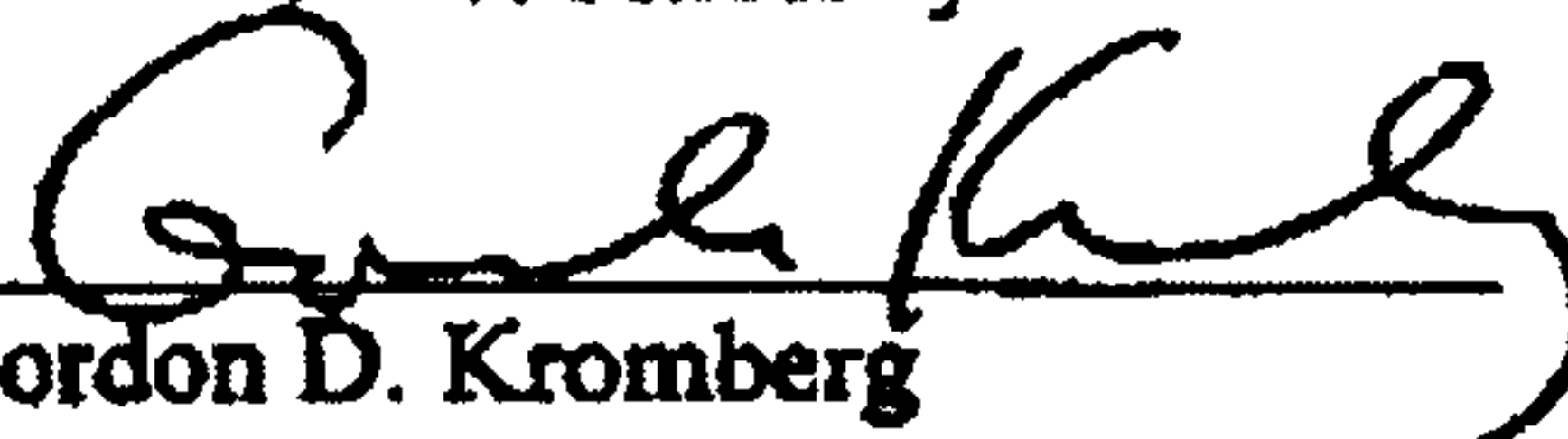
STIPULATION NO. 60

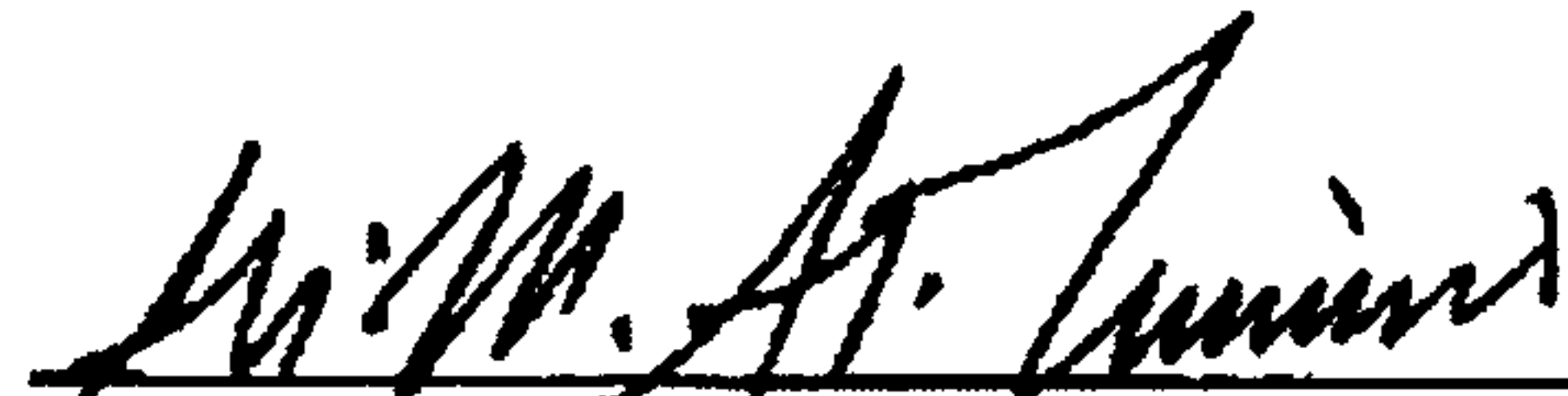
The United States and the defendant hereby stipulate and agree that the defendant was subject to court-authorized electronic surveillance for a significant portion of 2003. During that period, several thousand of the defendant's telephone calls were intercepted. In addition, the government obtained an extensive number of defendant's email messages during that same period.


Respectfully submitted,

Paul J. McNulty
United States Attorney

By


Gordon D. Kromberg
Assistant United States Attorney


ALI AL-TIMIMI


Edward B. MacMahon, Jr.
Counsel for ALI AL-TIMIMI

April 13, 2005 (7:58pm)

GOVERNMENT
EXHIBIT
12-60

Exhibit B

EDWARD B. MACMAHON, JR.

ATTORNEY AT LAW

107 EAST WASHINGTON STREET

P.O. BOX 903

MIDDLEBURG, VIRGINIA 20118

TELEPHONE (540) 687-3902
METRO (703) 589-1124

COPY

FACSIMILE (540) 687-6366

E-MAIL ADDRESS: ebmjr@crosslink.net

November 2, 2004

Via Facsimile (703) 739-9556 and U.S. Mail

Gordon D. Kromberg, Esquire
Assistant United States Attorney
Eastern District of Virginia
2100 Jamieson Street
Alexandria, VA 22314

Re: United States v. Al-Timimi, Crim. No. 1:04-385

Dear Gordon:

I have today filed a praecipe entering my appearance as counsel in this case. I look forward to working with you and your office on this case and hope that we can work together efficiently and professionally. I appreciate that you intend to allow broad access to your files and am happy to schedule a convenient time for a review of same as I understand that there is a tremendous amount of discovery in this case.

I am writing this letter to request certain items of discovery. I will try to describe the areas in which I believe discovery is appropriate and will describe certain items that I need.

First, pursuant to Brady and its progeny and Rule 16, I would like to review all of the statements of Mr. Al-Timimi that are in the government's possession, custody or control. I understand from conversations with prior counsel that Mr. Al-Timimi has been the subject of various FISA warrants for some extended period. I am requesting that the tapes or transcripts of any tapped phone conversations, taps of any sort, and other fruits of any FISA warrants or other non-FISA warrants - e.g. mail covers or pen registers - that relate to Mr. Al-Timimi be produced. I understand that this may be a large quantity of information and that there may be classification issues with respect to these items but they are plainly discoverable. Of course, I have already received a clearance in the Moussaoui case, so classification should not be a problem. In this regard, I am also requesting the same information with respect to any alleged co-conspirators whose statements the government considers to be admissible pursuant to Rule 801 (d)(2)(E).

Gordon D. Kromberg, Esquire
 Assistant United States Attorney
 November 2, 2004
 Page 2

Second, I am requesting any and all affidavits prepared and filed in support of any warrants issued pursuant to FISA or other search warrants that refer or relate to Mr. Al-Timimi. I am especially interested in the identity of the listed "foreign power" identified in any warrants pursuant to 50 U.S.C. § 1801 as that information, in and of itself, may be exculpatory. That information should also show whether the United States has sought or received any information from any foreign governments that would show or tend to show that Mr. Al-Timimi ever recruited any Muslim for armed conflicts anywhere in the world. From a review of the transcript in the prior case, countries that may have information about Mr. Al-Timimi include, but are not limited to, Canada, United Kingdom, Australia, Saudi Arabia, Kuwait, United Arab Emirates, Jordan, Pakistan, Indonesia, Singapore, China, South Korea, Bosnia, Jordan and/or Israel. The F.B.I. and/or the C.I.A. may have files that relate to any investigations of Mr. Al-Timimi with respect to and in coordination with any of these countries. If no such files exist then the United States can say that it has searched for such information and none exists and that there is no information that would show that the government has information that Mr. Al-Timimi has ever recruited any persons for participation in any armed conflict other than as alleged in this Indictment.

I also need any and all information regarding LET and its relationship with either the United States government or the government of Pakistan for the time period at issue in the Indictment. If LET was supported by the government of Pakistan which is an ally of the United States, then that information would be exculpatory.

I also need to review the items seized from his home.

Also, I am requesting certain documents that are referenced in the 911 Commission report. All of these items are discoverable under Brady and its progeny. Specifically, one of the central themes of the statements attributed to several of the convicted co-conspirators was that at the meeting that was held on or about September 15, 2001, "Unindicted Conspirator #1 told KHWAJA MAHMOOD HASAN and the others gathered there that the mullah or emir of Afghanistan had called for Muslims to come to Afghanistan and help fight in their defense." (§ 6 of Statement of Facts in support of plea of HASAN) The United States has vouched that the evidence at that trial would have proved that such a statement was made beyond a reasonable doubt. This is repeated in several other statements of fact in support of other plea agreements - e.g. Kwon and Aatique - that I have reviewed and forms part of the allegations set forth in paragraphs 1-6 of the Overt Acts in this Indictment. If, as I believe, the Mullah or Emir of Afghanistan never actually issued such a call, then it would undermine the credibility of the government's witnesses who say that Mr. Al-Timimi relayed such a call. To rebut this claim, the defense needs discovery from the government.

Gordon D. Kromberg, Esquire
Assistant United States Attorney
November 2, 2004
Page 3

In the 911 Commission report - specifically in chapter 10.2 - there are many references to war plans as well as negotiations with representatives of the Taliban regarding the issue of turning Bin Laden and his lieutenants over to the United States in lieu of war. We are therefore requesting all of the documents that are listed as source materials in the footnotes 36 to 54 of the report as well as 79-86. These documents show the actual time-line of the negotiations between the U.S. and the Taliban and must be produced. I have attached a copy of the footnotes to chapter 10 of the 911 Commission report for your convenience.

On a related note, there are, I believe, several high ranking Taliban officials in U.S. custody who can shed light on these issues as well. Two such detainees are apparently in custody in Cuba. One such person is Mulla Abdus Salam Zaeef, the former Taliban Ambassador to Pakistan. Upon information and belief, he is the official that is described in the telephone conversation between Armitage and Mahmoud in footnote 55 to Chapter 10. Also in custody is Mulla Muhammad Fadhil who was the Deputy Defense Minister for the Taliban in the time period in question. If they have been interrogated then the 302s of those interrogations should be produced as Brady. Regardless, we intend to seek subpoenas to have at least the testimony of these two witnesses preserved for trial. That testimony would be helpful to the defense as it would show that there were no calls issued for volunteers to fight for the Taliban in that time period. In fact, the final ultimatum to the Taliban from the United States was not issued until September 20, 2001.

From my experience in the Moussaoui case, I believe that it is likely that the Court would order us to conduct Rule 30 depositions of these witnesses. I am happy to work with you on a schedule for such depositions.

If there are reports regarding the computers seized from Mr. Al-Timimi and what the government has found on those hard drives, they should be produced under Rule 16 (F).

If the government has any expert witnesses that it intends to use at trial then the required information pursuant to Rule 16 (G) should be produced as well.

I look forward to your response.

Best Regards,



Edward B. MacMahon, Jr.

EBM/mlj
Enclosure

cers and one of the firefighters in the North Tower, at least some FDNY personnel were unwilling to take evacuation orders from police that morning.

209. Based on more than 100 interviews we conducted and our review of 500 internal FDNY interview transcripts, we conclude that out of these 32 companies, all on-duty members of 19 companies are likely to have known to evacuate (Engine Companies 1, 4, 7, 9, 15, 16, 21, 24, 28, 33, 39, and 65; Ladder Companies 1, 5, 6, 8, 9, 110, and Rescue 1). We also conclude that at least some members of each of five companies knew to evacuate (two firefighters from Ladder Company 10; the officer of Ladder Company 20; all but the officer of Engine Company 10; at least two firefighters from Squad 18; and at least three firefighters from Engine 6). We do not know whether members of the eight other companies knew to evacuate (Engine Companies 55, 207, and 226; Rescue 2, 3, and 4; Hazmat 1, and Squad 1) because they all died, and we have come across no on-point eyewitness accounts related to their operations. It is very possible that at least some of these firefighters did hear the evacuation order but nevertheless failed to evacuate in the only 29-minute period between the collapse of the two towers. In addition, it is possible that several of the eight companies for which we have no record of their receiving evacuation instructions were in the South Tower and thus died in its earlier collapse.

210. Eric Lipton, "A New Weapon for Firefighters," *New York Times*, May 30, 2004, p. 27.

10 Wartime

1. All times are Eastern Daylight Time. Sometime around 10:30, after the decision had already been made not to return to Washington, a reported threat to "Angel"—the code word for Air Force One—was widely disseminated in the Presidential Emergency Operations Center (PEOC) and aboard Air Force One. Notes from the morning indicate that Vice President Cheney informed President Bush in a phone conversation shortly after 10:30 that an anonymous threat had been phoned into the White House that was viewed as credible. At about the same time, news of the threat was conveyed on the air threat conference call.

The Secret Service's Intelligence Division tracked down the origin of this threat and, during the day, determined that it had originated in a misunderstanding by a watch officer in the White House Situation Room. The director of the White House Situation Room that day disputes this account. But the Intelligence Division had the primary job of running down the story, and we found their witnesses on this point to be credible. During the afternoon of September 11 the leadership of the Secret Service was satisfied that the reported threat to "Angel" was unfounded.

At the White House press briefing on September 12, spokesperson Ari Fleischer described the threat to Air Force One as "real and credible." White House transcript, Press Briefing by Ari Fleischer, Sept. 12, 2001 (online at www.whitehouse.gov/news/releases/2001/09/print/20010912-8.html). Fleischer told us he cited the information in good faith. Indeed, Fleischer had conferred with Vice President Cheney and Karen Hughes before the briefing, and they had decided to let people know about the threat, all of them believing it was true. According to Fleischer, only weeks later did he learn—from press reports—that the threat was unfounded. We have not found any evidence that contradicts his account. Ari Fleischer interview (Apr. 22, 2004); Chuck Green interview (Mar. 10, 2004); Deborah Loewer meeting (Feb. 6, 2004); Ralph Sigler meeting (May 10, 2004); Andrew Card meeting (Mar. 31, 2004); Edward Maritzel interview (Apr. 21, 2004); Secret Service briefing (Jan. 29, 2004).

2. Edward Maritzel interview (Apr. 21, 2004); USSS memo, interview with Edward Maritzel, Oct. 3, 2001; President Bush and Vice President Cheney meeting (Apr. 29, 2004); Ari Fleischer interview (Apr. 22, 2004); Deborah Loewer meeting (Feb. 6, 2004); White House record, PEOC Watch Log, Sept. 11, 2001.

3. Commission analysis of Air Force One radar data; Edward Maritzel interview (Apr. 21, 2004); USSS memo, interview with Edward Maritzel, Oct. 3, 2001; Deborah Loewer meeting (Feb. 6, 2004).

4. White House record, Situation Room Communications Log, Sept. 11, 2001.

5. White House transcript, Rice interview with Bob Woodward of the *Washington Post*, Oct. 24, 2001, p. 367. In the interview, Rice also said the President characterized the war as "global in nature." Ibid.

6. See White House transcript, Rice interview with Scott Pelley of CBS, Aug. 2, 2002, p. 408; but see Rice's statement to Bob Woodward: "In the first video conference, the assumption that everybody kind of shared was that it was global terrorists. . . . I don't believe anybody said this is likely al Qaeda. I don't think so." White House transcript, Rice interview with Bob Woodward, Oct. 24, 2001, p. 367.

7. NSC memo, Summary of Conclusions of Deputies Committee Meeting (held by secure teleconference), Sept. 11, 2001.

8. The Secretary's decision was broadcast on the air threat conference call at 10:43. A minute later, Secretary Rumsfeld spoke to the Vice President, and he asked Rumsfeld to run the issue by the President. At 10:45 conference were told to "hold off" on Defcon 3, but a minute later the order was reinstated. Rumsfeld believed the matter was urgent and, having consulted DOD directives, concluded he had the authority to issue the order and would brief the President. Rumsfeld briefed the President on the decision at 11:15. See DOD transcript, Air Threat Conference Call, Sept. 11, 2001; Stephen Cambone interviews (July 8, 2004; July 12, 2004); DOD notes, Stephen Cambone notes, Sept. 11, 2001.

9. The 9/11 crisis tested the U.S. government's plans and capabilities to ensure the continuity of constitutional government and the continuity of government operations. We did not investigate this topic, except as needed in order to understand the activities and communications of key officials on 9/11. The Chair, Vice Chair, and senior staff were briefed on the general nature and implementation of these continuity plans.

10. White House transcript, Statement by the President in His Address to the Nation, Sept. 11, 2001 (online at www.whitehouse.gov/news/releases/2001/09/20010911-16.html).

11. White House transcript, Rice interview with Bob Woodward, Oct. 24, 2001, p. 371.

12. Joshua Bolten meeting (Mar. 18, 2004); see also Steven Brill, *After: How America Confronted the September 12* (Simon & Schuster, 2003), pp. 50-51.

13. The collapse of the World Trade Center towers on the morning of September 11 coated Lower Manhattan with a thick layer of dust from the debris and fire. For days a plume of smoke rose from the site. Between September 11 and September 21, 2001, EPA issued five press releases regarding air quality in Lower Manhattan. A release on September 16 quoted the claim of the assistant secretary for labor at OSHA that tests show "it is safe for New Yorkers to go back to work in New York's financial district." (OSHA's responsibility extends only to indoor air quality for workers, however.) The most controversial press release, on September 18, quoted EPA Administrator Christine Whitman as saying that the air was "safe" to breathe. This statement was issued the day after the financial markets reopened. The EPA Office of Inspector General investigated the issuance of these press releases and concluded that the agency did not have enough data about the range of possible pollutants other than asbestos to make a judgment, lacked public health benchmarks for appropriate levels of asbestos and other pollutants, and had imprecise methods for sampling asbestos in the air; it also noted that more than 25 percent of the bulk dust samples collected before September 18 showed the presence of asbestos above the agency's 1 percent benchmark. EPA Inspector General report, "EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement," Aug. 21, 2003.

We do not have the expertise to examine the scientific accuracy of the pronouncements in the press releases. The issue is the subject of pending civil litigation.

We did examine whether the White House improperly influenced the content of the press releases so that they would intentionally mislead the public. The EPA press releases were coordinated with Samuel Thernstrom, associate director for communications at the White House Council on Environmental Quality. Oral reports, interviews with EPA officials, and materials on the EPA's Web site were not coordinated through the White House. Although the White House review process resulted in some editorial changes to the press releases, these changes were consistent with what the EPA had already been saying without White House clearance. See, e.g., David France and Erika Check, "Asbestos Alert: How much of the chemical does the World Trade Center wreckage contain?" *Newsweek Web Exclusive*, Sept. 14, 2001 (quoting EPA Administrator Whitman as saying the air quality is not a health problem); Andrew C. Revkin, "After the Attack: The Chemicals: Monitors Say Health Risk From Smoke Is Very Small," *New York Times*, Sept. 14, 2001, p. A6 (EPA says levels of airborne asbestos below threshold of concern); Higo Kageya, "Terrorist Attacks: Asbestos Targeted in Cleanup Effort; EPA's Whitman: 'No reason for concern,'" *Newsday*, Sept. 16, 2001, p. W31 (Whitman says there is no reason for concern given EPA tests for asbestos). There were disputes between the EPA's communications person and the White House coordinator regarding the press releases. The EPA communications person said she felt extreme pressure from the White House coordinator, and felt that they were no longer her press releases. EPA Inspector General interview of Tina Kreisher, Aug. 28, 2002. The White House coordinator, however, told us that these disputes were solely concerned with process, not the actual substance of the releases. Samuel Thernstrom interview (Mar. 31, 2004). Former EPA administrator Christine Whitman agreed with the White House coordinator. Christine Whitman interview (June 28, 2004). The documentary evidence supports this claim. Although Whitman told us she spoke with White House senior economic adviser Lawrence Lindsey regarding the need to get the financial markets open quickly, she denied he pressured her to declare the air was safe due to economic expediency. We found no evidence of pressure on EPA to say the air was safe in order to permit the markets to reopen. Moreover, the most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened.

The EPA did not have the health-based benchmarks needed to assess the extraordinary air quality conditions in Lower Manhattan after 9/11. The EPA and the White House therefore improvised and applied standards developed for other circumstances in order to make pronouncements regarding air safety, advising workers at Ground Zero to use protective gear and advising the general population that the air was safe. Whether those improvisations were appropriate is still a subject for medical and scientific debate. See EPA Inspector General report, "EPA's Response to the World Trade Center Collapse," Aug. 21, 2003, pp. 9-19.

14. Brill, *After*, pp. 47-50.

15. We studied this episode and interviewed many of the participants. The NYSE, Amex, and Nasdaq have developed plans for coordination and cooperation in the event of a disaster affecting one or all of them, but these plans do not include other exchanges or international components. The White House efforts during the crisis were coordinated by the President's Working Group on Financial Markets, a group created in the 1980s.

16. Brill, *After*, pp. 53-55, 89-91. Following interim reports in 1999 and 2000, a congressional commission

chided by former senators Gary Hart and Warren Rudman, and directed by retired general Charles Boyd, had, in January 2001, recommended the creation of a cabinet department dedicated to "homeland security." In May 2001, President Bush named Vice President Cheney to head a task force on problems of national preparedness. His recently hired coordinator, Admiral Steven Abbot, had started work just before the 9/11 attack.

17. Ashcroft told us that he established a "hold until cleared" policy because of the high rate of flight from deportation proceedings. John Ashcroft testimony, Apr. 13, 2004. For closure of hearings and secrecy of the detainee names, see DOJ email, Chief Immigration Judge Michael Creppy to all immigration judges, "Cases requiring special procedures," Sept. 21, 2001. This policy has been challenged in two U.S. courts of appeals. The Sixth Circuit held that there is a constitutional right of public access to these hearings; the Third Circuit reached the opposite result. The Supreme Court has not yet decided to resolve this "circuit split." See *DeLoach v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002); *North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002), cert. denied, 123 S.Ct. 2215 (2003). For the length of the clearance process, see DOJ Inspector General report, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks," Apr. 2003, p. 51.

18. DOJ Inspector General report, "The September 11 Detainees," Apr. 2003, pp. 142-150, 195-197.

19. John Ashcroft testimony, Apr. 13, 2004; DOJ record, "Special Interest Cases," Sept. 16, 2003. These numbers do not add up to 768 because we have not included all categories. Some of those remanded to the Marshals Service were held as material witnesses, and individuals were released "on bond" only after they were "cleared" by the FBI of any connection to 9/11. For the response to our questions about the 9/11 detainee program, see DOJ email, Daniel Levin to the Commission, July 9, 2004; July 13, 2004. There is one exception to the statement in DOJ text that the detainees were lawfully held on immigration charges; one detainee was held for a short time "despite the fact that there was no valid immigration charge." DOJ Inspector General report, "The September 11 Detainees," Apr. 2003, p. 15, n. 22. See also Khaled Medhat Abou El Fadl testimony, Dec. 8, 2003.

20. Intelligence report, interrogation of KSM, May 10, 2003.

21. The complete title of the Act is *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT)* Act of 2001, Pub. L. No. 107-56, 115 Stat. 273 (signed into law Oct. 26, 2001).

22. John Ashcroft interview (Dec. 17, 2003).

23. On the early development of the Patriot Act, see, e.g., Brill, *After*, pp. 73-76, 120-125.

24. During the morning of September 11, the FAA suspended all nonemergency air activity in the national airspace. While the national airspace was closed, decisions to allow aircraft to fly were made by the FAA working with the Department of Defense, Department of State, U.S. Secret Service, and the FBI. The Department of Transportation reopened the national airspace to U.S. carriers effective 11:00 a.m. on September 13, 2001, for flights out of or into airports that had implemented the FAA's new security requirements. See FAA response to Commission questions for the record, June 8, 2004.

25. After the airspace reopened, nine chartered flights with 160 people, mostly Saudi nationals, departed from the United States between September 14 and 24. In addition, one Saudi government flight, containing the Saudi deputy defense minister and other members of an official Saudi delegation, departed Newark Airport on September 14. Every airport involved in these Saudi flights was open when the flight departed, and no inappropriate actions were taken to allow those flights to depart. See City of St. Louis Airport Authority, Lambert-St. Louis International Airport response to Commission questions for the record, May 27, 2004; Los Angeles International Airport response to Commission questions for the record, June 2, 2004; Greater Orlando Aviation Authority, Orlando International Airport response to Commission questions for the record, June 8, 2004; Metropolitan Airports Authority, Washington Dulles International Airport response to Commission questions for the record, June 8, 2004; Port Authority of New York and New Jersey, JFK Airport response to Commission questions for the record, June 4, 2004; Massachusetts Port Authority, Logan International Airport, and Hanscom Airfield response to Commission questions for the record, June 17, 2004; Las Vegas-McCarran International Airport response to Commission questions for the record, June 22, 2004; Port Authority of New York and New Jersey, Newark Airport response to supplemental question for the record, July 9, 2004.

Another particular allegation is that a flight carrying Saudi nationals from Tampa, Florida, to Lexington, Kentucky, was allowed to fly while the airspace was closed, with special approval by senior U.S. government officials. On September 13, Tampa police brought three young Saudis they were protecting on an off-duty security detail to the airport so they could get on a plane to Lexington. Tampa police arranged for two private investigators to provide security on the flight. They boarded a chartered Learjet. Dan Grossi interview (May 24, 2004); Manuel Perez interview (May 27, 2004); John Solomon interview (June 4, 2004); Michael Fendle interview (June 4, 2004). The plane took off at 4:37 p.m., after national airspace was open, more than five hours after the Tampa airport had reopened, and after other flights had arrived at and departed from that airport. Hillsborough County Aviation Authority, Tampa International Airport response to Commission questions for the record, June 7, 2004. The plane's pilot told us there was "nothing unusual whatsoever" about the flight other than there were few airplanes in the sky. The company's owner and director of operations agreed, saying that "it was just a routine little trip for us," and that he would have

heard if there had been anything unusual about it. The pilot said he followed standard procedures and filed his flight plan with the FAA prior to the flight, adding, "I was never questioned about it." Christopher Steele interview (June 14, 2004); Barry Ellis interview (June 14, 2004). FAA records confirm this account. FAA supplemental response to Commission questions for the record, June 8, 2004. When the plane arrived at Lexington Blue Grass Airport, that airport had also been open for more than five hours. Lexington-Fayette Urban County Airport Board, Blue Grass Airport response to Commission questions for the record, June 8, 2004. The three Saudi nationals departed from the plane and were met by local police. Their private security guards were paid, and the police then escorted the three Saudi passengers to a hotel where they joined relatives already in Lexington. Mark Barnard interview (June 7, 2004). The FBI is alleged to have had no record of the flight and denied that it occurred, hence contributing to the story of a "phantom flight." This is another misunderstanding. The FBI was initially misinformed about how the Saudis got to Lexington by a local police officer in Lexington who did not have firsthand knowledge of the matter. The Bureau subsequently learned about the flight. James M. interview (June 18, 2004).

26. Richard Clarke interview (Jan. 12, 2004).

27. Andrew Card meeting (Mar. 31, 2004); President Bush and Vice President Cheney meeting (Apr. 29, 2004); Condoleezza Rice meeting (Feb. 7, 2004); Prince Bandar interview (May 5, 2004); Richard Clarke interview (Jan. 12, 2004); Richard Clarke testimony, Mar. 24, 2004 ("I would love to be able to tell you who did it, who brought this proposal to me, but I don't know"). Instead, the matter was handled as follows. Within days of September 11, tearing reprisals against Saudi nationals, Rihab Massoud, the deputy chief of mission at the Saudi embassy in Washington, D.C., called Dale Watson, the FBI's assistant director for counterterrorism, and asked for help in getting some of its citizens out of the country. Rihab Massoud interview (May 11, 2004). At about the same time, Michael Rolince, chief of the FBI's international terrorism operations section, also heard from an FBI official in Newark about a proposed flight of Saudis out of the country. Michael Rolince interview (June 9, 2004). We believe this was the Saudi deputy defense minister's flight. Rolince says he told the Newark official that the Saudis should not be allowed to leave without having the names on their passports matched to their faces, and their names run through FBI case records to see whether they had surfaced before. Rolince and Watson briefed Robert Mueller, the director of the FBI, about the issue and how they were handling it. The State Department played a role as well in flights involving government officials or members of the royal family. State coordinated with the FBI and FAA to allow screening by the FBI of flights with Saudi nationals on board. There is no evidence that State tried to limit the screening. DOS record, Log of USA 9-11 Terrorist Attack Task Force, Sept. 13, 2001; Jack S. interview (June 14, 2004). The FBI effectively approved the Saudi flights at the level of a section chief. Having an opportunity to check the Saudis was useful to the FBI. This was because the U.S. government did not, and does not, routinely run checks on foreigners who are leaving the United States. This procedure was convenient to the FBI, as the Saudis who wished to leave in this way would gather and present themselves for record checks and interviews, an opportunity that would not be available if they simply left on regularly scheduled commercial flights.

28. These flights were screened by law enforcement officials, primarily the FBI. For example, one flight, the so-called Bin Ladin flight, departed the United States on September 20 with 26 passengers, most of them relatives of Osama Bin Ladin. Screening of this flight was directed by an FBI agent in the Baltimore Field Office who was also a pilot. This agent, coordinating with FBI headquarters, sent an electronic communication to each of the field offices through which the Bin Ladin flight was scheduled to pass, including the proposed flight manifest and directing what screening should occur. He also monitored the flight as it moved around the country—from St. Louis to Los Angeles to Orlando to Washington Dulles, and to Boston Logan—correcting for any changes in itinerary to make sure there was no lapse in FBI screening at these locations. Again, each of the airports through which the Bin Ladin flight passed was open, and no special restrictions were lifted to accommodate its passage. James C. interview (June 3, 2004).

The Bin Ladin flight and other flights we examined were screened in accordance with policies set by FBI headquarters and coordinated through working-level interagency processes. Michael Rolince interview (June 9, 2004). Although most of the passengers were not interviewed, 22 of the 26 people on the Bin Ladin flight were interviewed by the FBI. Many were asked detailed questions. None of the passengers stated that they had any recent contact with Usama Bin Ladin or knew anything about terrorist activity. See, e.g., FBI report of investigation, interview of Mohammed Saleh Bin Ladin, Sept. 21, 2001. As Richard Clarke noted, long before 9/11 the FBI was following members of the Bin Ladin family in the United States closely. Richard Clarke testimony, Mar. 24, 2004. Two of the passengers on this flight had been the subjects of preliminary investigations by the FBI, but both their cases had been closed, in 1999 and March 2001, respectively, because the FBI had uncovered no derogatory information on either person linking them to terrorist activity. Their cases remained closed as of 9/11, were not reopened before they departed the country on this flight, and have not been reopened since. FBI electronic communication, Summary of Information Regarding Flights taken by Saudi Citizens Out of the U.S. Shortly After September 11, 2001, Oct. 29, 2003, pp. 9-10.

29. Michael Rolince interview (June 9, 2004). Massoud corroborates this account. He said the FBI required the names and personal information of all departing passengers sponsored for departure by the Saudi Embassy. Rihab Massoud interview (May 11, 2004).

30. Jack S. interview (June 14, 2004).

31. The FBI checked a variety of databases for information on the Bin Ladin flight passengers and searched the aircraft. Because it was not clear to us whether the TIPOFF terrorist watchlist was checked by the FBI, the Terrorist Screening Center checked the names of individuals on the flight manifests of six Saudi flights against the current TIPOFF watchlist at our request prior to our hearing in April 2004. There were no matches. At our request, based on additional information, the Terrorist Screening Center in June and July 2004 rechecked the names of individuals believed to be on these six flights, the names of individuals on three more charter flights, the names of individuals on the flight containing the Saudi Deputy Defense Minister, and the names of Saudi nationals on commercial flights that journalists have alleged are suspect. There were no matches. Tim D. interviews (Apr. 12, 2004; June 30, 2004; July 9, 2004); FBI memo, Terrorist Screening Center to Director's Office, "Request by 9/11 Commission Task Force to screen the airline passenger lists through the TDSB and TIPOFF databases," Mar. 30, 2004.

32. White House transcript Vice President Cheney interview with Chadle Gibson of ABC, Sept. 4, 2002, p. 11.

33. "The only . . . true advice I receive is from our war council." White House transcript, President Bush interview with Bob Woodward and Dan Balz of the *Washington Post*, Dec. 20, 2001.

34. On Secretary Rumsfeld's remarks, see White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001. The President's adviser, Karen Hughes, who was in the interview, listed the points Rumsfeld made at the smaller NSC meeting. *Ibid.*

35. On the President's tasking in the earlier meeting held that day, see NSC memo, Summary of Conclusions for NSC Meeting Held on September 12, 2001, Dec. 17, 2001. On the paper that went beyond al Qaeda, see NSC memo, Deputies Draft Paper (attached to Agenda for NSC Meeting Scheduled for Sept. 12, 2001). The Summary of Conclusions for the afternoon meeting indicates that the paper was discussed.

On giving priority to preventing terrorists from acquiring weapons of mass destruction, see White House transcript, Hadley interview with Dan Balz and Bob Woodward, Jan. 11, 2002, p. 535.

36. NSC memo, Summary of Conclusions for Principals Committee Meeting Held on September 13, 2001. In addition to the usual members of President Bush's war cabinet, Secretary of Transportation Mineta and FAA security chief Caravan also attended.

37. DOS cable, State 158711, "Deputy Secretary Armitage's Meeting with General Mahmud Actions and Support Expected of Pakistan in Fight Against Terrorism," Sept. 14, 2001. On September 14, 2001, the U.S. Embassy in Islamabad sent Musharraf's answer to the State Department by cable.

38. DOS cable, Islamabad 5123, "Musharraf Accepts the Seven Points," Sept. 14, 2001.

39. NSC memo, Summary of Conclusions of NSC Meeting Held on September 13, 2001. According to the Summary of Conclusions, this meeting of the President and his advisers took place in the White House Situation Room; however, the agenda alerting agencies to the meeting specified that it would be conducted via the secure video teleconference system (SVTS). Thus, it is unclear whether the attendees met face-to-face at the White House or held their meeting remotely via SVTS.

40. State Department memo, "Gameplan for Polmi Strategy for Pakistan and Afghanistan," Sept. 14, 2001 (tasked by President Bush). The paper was sent to the White House on September 14, 2001. The demand to free all imprisoned foreigners reflected the U.S. government's concern about the welfare of several foreign aid workers in Afghanistan who had been imprisoned by the Taliban in August 2001. Two young American women, Heather Mercer and Dayna Curry of the organization "Shelter Now International," were among those arrested and charged with promoting Christianity. The Taliban and other Islamists found their activities an affront to Islamic and in violation of Afghanistan's laws and the regime's tenets. Wendy Chamberlin interview (Oct. 28, 2003). Powell stated that the President wanted to get the hostages out but that desire would not restrain American action. White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

41. State Department memo, "Gameplan for Polmi Strategy for Pakistan and Afghanistan," Sept. 14, 2001.

42. White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

43. Stephen Hadley meeting (Jan. 31, 2004). Hadley told us that the White House was not satisfied with the Defense Department's plans to use force in Afghanistan after 9/11. *Ibid.*; see also White House transcript, Rice interview with John King of CNN, Aug. 2, 2002, p. 421.

44. Tommy Franks interview (Apr. 9, 2004).

45. NSC memo, Hadley to recipients, "Discussion Paper for NSC meeting at Camp David on 14 September," Sept. 14, 2001.

46. CIA memo, "Going to War," Sept. 15, 2001.

47. White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

48. DOD briefing materials, "Evolution of Infinite Resolve Planning (AQ, UBL)," undated (provided to the Commission on Mar. 19, 2004). According to Deputy National Security Advisor Stephen Hadley, the President responded to Shelton by saying that the boots-on-the-ground option was an interesting idea. He wanted to know what the CIA would do when ground forces were in Afghanistan. White House transcript, Hadley interview with Dan Balz and Bob Woodward, Jan. 11, 2002, p. 545.

49. NSC memo, "Conclusions of National Security Council Meeting," Sept. 17, 2001, White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

50. NSC memo, "Conclusions of National Security Council Meeting," Sept. 17, 2001.

51. See NSC memo, Rice to Cheney, Powell, O'Neill, Rumsfeld, Ashcroft, Gonzales, Card, Tenet, and Shelton, Sept. 16, 2001.

52. NSC memo, "Conclusions of National Security Council Meeting," Sept. 17, 2001.

53. NSC memo, Summary of Conclusions of Terrorist Fund-raising Meeting Held on September 18, 2001.

54. DOS briefing materials, "Fact Sheet on Response to Terrorist Attacks in US," Sept. 17, 2001.

55. DOS cable, State 161279, "Deputy Secretary Armitage-Mamoud Phone Call," Sept. 18, 2001.

56. White House transcript, Vice President Cheney interview with Dan Balz and Bob Woodward, Jan. 18, 2002, pp. 7-8.

57. Stephen Hadley meeting (Jan. 31, 2004).

58. See National Security Presidential Directive 9, Oct. 25, 2001.

59. President Bush and Vice President Cheney meeting (Apr. 29, 2004). On Iran, see Condoleezza Rice testimony, Apr. 8, 2004.

60. Richard A. Clarke, *Against All Enemies: Inside America's War on Terror* (Free Press, 2004), p. 32. According to Clarke, he responded that "al Qaeda did this." When the President pressed Clarke to check if Saddam was involved and said that he wanted to learn of any shred of evidence, Clarke promised to look at the question again, but added that the NSC and the intelligence community had looked in the past for linkages between al Qaeda and Iraq and never found any real linkages. *Ibid.*

61. President Bush told us that Clarke had mischaracterized this exchange. On the evening of September 12, the President was at the Pentagon and then went to the White House residence. He dismissed the idea that he had been wandering around the Situation Room alone, saying, "I don't do that." He said that he did not think that any president would roam around looking for something to do. While Clarke said he had found the President's tone "very intimidating," ("Clarke's Take on Terror," CBSnews.com, Mar. 21, 2004, online at www.cbsnews.com/stories/2004/03/19/60minutes/primate07356.shtml), President Bush doubted that anyone would have found his manner intimidating. President Bush and Vice President Cheney meeting (Apr. 29, 2004). Roger Cressey, Clarke's deputy, recalls this exchange with the President and Clarke concerning Iraq shortly after 9/11, but did not believe the President's manner was intimidating. Roger Cressey interview (June 23, 2004).

62. NSC memo, Kurtz to Rice, Survey of Intelligence Information on any Iraq Involvement in the September 11 Attacks, Sept. 18, 2001. On *60 Minutes* (CBS, Mar. 21, 2004), Clarke said that the first draft of this memo was returned by the NSC Front Office because it did not find a tie between Iraq and al Qaeda. Rice and Hadley deny that they asked to have the memo redone for this reason.

63. See DOD notes, Victoria Clarke notes, Sept. 11, 2001; DOD notes, Stephen Cambone notes, Sept. 11, 2001. Cambone's notes indicate this exchange took place at 2:40 P.M. on September 11, 2001. Steven Cambone interview (July 15, 2004).

64. Condoleezza Rice meeting (Feb. 7, 2004). For an account of Rumsfeld's and Wolfowitz's position on Iraq, see Bob Woodward, *Bush at War* (Simon & Schuster, 2002), pp. 83-84. Rice told us that the *Bush at War* account of the Camp David discussions on Iraq accorded with her memory.

65. DOD memo, Office of the Under Secretary of Defense for Policy, "War on Terrorism: Strategic Concept," Sept. 14, 2001.

66. Colin Powell interview (Jan. 21, 2004). Rumsfeld told Bob Woodward that he had no recollection of Wolfowitz's remarks at Camp David. DOD transcript, "Secretary Rumsfeld Interview with the Washington Post," Jan. 9, 2002 (online at www.defenselink.mil/transcripts/2002/0202052002_t0109wp.html).

67. Colin Powell interview (Jan. 21, 2004). Powell raised concerns that a focus on Iraq might negate progress made with the international coalition the administration was putting together for Afghanistan. Taking on Iraq at this time could destroy the international coalition. *Ibid.*

68. Colin Powell interview (Jan. 21, 2004).

69. White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

70. Condoleezza Rice meeting (Feb. 7, 2004).

71. NSC memo, "Conclusions of National Security Council Meeting," Sept. 17, 2001.

72. Condoleezza Rice testimony, Apr. 8, 2004; see also Bob Woodward, *Plan of Attack* (Simon & Schuster, 2004), p. 22.

73. DOD memo, Wolfowitz to Rumsfeld, "Preventing More Events," Sept. 17, 2001. We review contacts between Iraq and al Qaeda in chapter 2. We have found no credible evidence to support theories of Iraqi government involvement in the 1993 WTC bombing. Wolfowitz added in his memo that he had attempted in June to get the CIA to explore these theories.

74. DOD memo, Wolfowitz to Rumsfeld, "Were We Asleep?" Sept. 18, 2001.

75. DOD memo, Rumsfeld to Shelton, "Some Thoughts for CINCs as They Prepare Plans," Sept. 19, 2001. In a memo that appears to be from Under Secretary of Defense Douglas Feith to Rumsfeld, dated September 20, the author expressed disappointment at the limited options immediately available in Afghanistan and the lack of ground options. The author suggested instead hitting terrorists outside the Middle East in the initial offensive, perhaps at lib-

crately selecting a non-al Qaeda target like Iraq. Since U.S. attacks were expected in Afghanistan, an American attack in South America or Southeast Asia might be a surprise to the terrorists. The memo may have been a draft never sent to Rumsfeld, or may be a draft of points being suggested for Rumsfeld to deliver in a briefing to the President. DOD memo, Feith to Rumsfeld, "Briefing Draft," Sept. 20, 2001.

76. Hugh Shelton interview (Feb. 5, 2004).

77. Tommy Franks interview (Apr. 9, 2004).

78. NSC memo, memorandum of conversation from meeting of President Bush with Prime Minister Blair, Sept. 20, 2001.

79. Tommy Franks interview (Apr. 9, 2004).

80. White House transcript, President Bush's Address to a Joint Session of Congress and the American People, Sept. 20, 2001. British Prime Minister Tony Blair attended the session.

81. Ibid. Several NSC officials, including Clarke and Cressy, told us that the mention of the Cole in the speech to Congress marked the first public U.S. declaration that al Qaeda had been behind the October 2000 attack. Clarke said he added the language on this point to the speech. Richard Clarke interview (Feb. 3, 2004); Roger Cressy interview (Dec. 15, 2003).

82. White House transcript, President Bush's Address to a Joint Session of Congress and the American People, Sept. 20, 2001. President Bush told the *Washington Post* that he considered having Powell deliver the ultimatum to the Taliban, but determined it would have more impact coming directly from the president. White House transcript, President Bush interview with Bob Woodward and Dan Balz, Dec. 20, 2001.

83. White House transcript, President Bush's Address to a Joint Session of Congress and the American People, Sept. 20, 2001.

84. Ibid.

85. Tommy Franks interview (Apr. 9, 2004). Vice Chairman of the Joint Chiefs of Staff Richard Myers and Major General Del Dailey, commander of Joint Special Operations Command, also attended the September 21 meeting. The meeting was in direct response to the President's September 17 instruction to Rumsfeld to develop a military campaign plan for Afghanistan. The original "Infinite Justice" name was a continuation of a series of names begun in August 1998 with Operation Infinite Reach, the air strikes against Bin Laden's facilities in Afghanistan and Sudan after the embassy bombings. The series also included Operation Infinite Resolve, a variety of proposed follow-on strikes on al Qaeda targets in Afghanistan.

86. DOD Special Operations Command and Central Command briefings (Sept. 15-16, 2003; Apr. 8-9, 2004; Apr. 28, 2004); Tommy Franks interview (Apr. 9, 2004). On death of Aref, see Daniel Benjamin and Steven Simon, *Age of Sacred Terror*, p. 349; Henry, "The CIA in Afghanistan, 2001-2002," *Studies in Intelligence* (classified version), vol. 47, no. 2 (2003), pp. 1, 11. See Donald Rumsfeld testimony, Mar. 23, 2004 (nearly two-thirds of the known leaders of al Qaeda had been killed or captured).

11 Foresight—and Hindsight

1. Roberta Wohlstetter, *Pearl Harbor: Warning and Decision* (Stanford Univ. Press, 1962), p. 387.

2. Intelligence Community analytic report, "The Foreign Terrorist Threat in the United States," NIE 95-13, July 1995, pp. vii-viii, 10-11, 13, 18.

3. Intelligence Community analytic report, "The Foreign Terrorist Threat in the US: Revisiting Our 1995 Estimate," ICB 97-8, Apr. 1997, p. 1.

4. For Bin Laden being mentioned in only two other sentences, see *ibid.*

5. Titles are drawn from articles in the National Intelligence Daily and the Senior Executive Intelligence Brief.

6. John McLaughlin interview (Jan. 21, 2004).

7. Ibid.; Parize Kindswater interview (Sept. 12, 2003).

8. Tim Weiner, "U.S. Hard Put to Find Proof Bin Laden Directed Attacks," *New York Times*, Apr. 13, 1999, p. A1.

9. Paul R. Pillar, *Terrorism and U.S. Foreign Policy* (Brookings Institution Press, 2001), p. 23; see also *ibid.*, pp. 5, 21-22.

10. For a concise statement of the role of the national estimate process, see Task force sponsored by the Council on Foreign Relations, *Making Intelligence Smarter: The Future of U.S. Intelligence* (Council on Foreign Relations, 1996), pp. 34-35 (additional views of Richard Betts).

11. Waldo Heinrichs, *Threshold of War: Franklin D. Roosevelt and American Entry into World War II* (Oxford Univ. Press, 1988), p. 215.

12. For the response being routine, see Gordon Prange, *At Dawn We Slept: The Untold Story of Pearl Harbor* (McGraw-Hill, 1981), pp. 732-733. For a brief summary of these routines and the reasons why the intercepts were not properly digested, see Graham Allison and Philip Zelikow, *Essence of Decision*, 2d ed. (Longman, 1999), p. 194, n. 72.

13. PDBs were not routinely briefed to congressional leaders, though this item could have been in some other intelligence briefing. It was not circulated in the NID or SEIB. For the September 1998 report, see Intelligence report, "Terrorism: Possible Attack on a U.S. City," Sept. 8, 1998.

14. For the August report, see Intelligence report, "Terrorism: Alleged Threat by Arab Terrorists to Attack the World Trade Center in New York," Aug. 12, 1998. An FAA civil aviation security official believed the plan was improbable because Libyan planes were required to operate within airspace limitations and the Libyans did not possess aircraft with the necessary range to make good on the threat. Jack S. interview (June 13, 2001). On September 30, 1999, the FAA closed the file on the August report after investigation could not corroborate the report, and the source's credibility was deemed suspect. FAA report, Transportation Security Intelligence ICF Report 980162, undated, but see FAA/TSA rebuttal to the Joint Inquiry's Sept. 18, 2002, staff statement, undated, p. 1 (stating that the FAA did not formally analyze this threat). The Algerian hijackers had placed explosives in key areas of the cabin. However, there was some speculation in the media based on reports from a passenger aboard the plane that the hijackers had discussed crashing it into the Eiffel Tower. FAA report, FAA Intelligence Case File 94-305, undated.

15. For Murad's idea, see chapter 5, note 33.

16. For Clarke's involvement in the 1996 Olympics, see Richard Clarke interview (Dec. 18, 2003). For the 1998 exercise, see Chuck Green interview (Apr. 21, 2004); NSC briefing paper, Nov. 10, 1998.

17. For the report of the National Transportation Safety Board, see NTSB report, "Aircraft Accident Brief," Mar. 13, 2002 (online at www.ntsb.gov/Publicat/2002/aab0201.htm). For the early 2000 CSG discussion, see NSC note, CSG SVTS agenda, Jan. 31, 2000.

18. Richard Clarke testimony, Mar. 24, 2004.

19. FAA memo, Office of Civil Aviation Security Intelligence, "Usama Bin Laden/World Islamic Front Hijack Threat," Intelligence Note 99-06, Aug. 4, 1999, pp. 5-6.

20. Ibid.

21. As part of his 34-page analysis, the attorney explained why he thought that a fueled Boeing 747, used as a weapon, "must be considered capable of destroying virtually any building located anywhere in the world." DOJ memo, Robert D. to Cathleen C., "Aerial Intercept and Shoot-downs: Ambiguities of Law and Practical Considerations," Mar. 30, 2000, p. 10. Also, in February 1974, a man named Samuel Byck attempted to commandeer a plane at Baltimore Washington International Airport with the intention of forcing the pilots to fly into Washington and crash into the White House to kill the president. The man was shot by police and then killed himself on the aircraft while it was still on the ground at the airport.

22. For NORAD's hypothesis of aircraft as weapons, see, e.g., Ralph Eberhardt interview (Mar. 1, 2004). For the 2001 Positive Force 01 exercise, see DOD briefing (Apr. 29, 2004); Tom Cech and Mark Postgate interview (June 7, 2004).

23. For the Gates report's recommendations, see DCI task force report, "Improving Intelligence Warning," May 29, 1992. For strengthening of the warning official, see DCI memo, "Warning," July 17, 1992. For the recommendations languishing, see Charles Allen interview (Sept. 22, 2003). For CTC having responsibility for warning, see Robert Vickers interview (Sept. 17, 2003). For the Board's warnings, see, e.g., Community Counterterrorism Board report, "Intelligence Community Terrorist Threat Advisory: Bin Laden Orchestrating Possible Anti-US Attacks," June 30, 2000.

24. CIA briefing materials, "DCI Update," Aug. 23, 2001.

25. James Pavitt interview (Jan. 8, 2004). For more on this meeting, see Condoleezza Rice meeting (Feb. 7, 2004); George Tenet interview (Jan. 28, 2004).

26. For the briefing to the President-elect, see James Pavitt interview (Jan. 8, 2004). The CIA's formal analysis of what would happen if Bin Laden alone was removed as compared with the importance of shutting down the sanctuary was offered in several places. See, e.g., CIA analytic report, "Likely Impact of Taliban Actions Against Al Qaeda," Feb. 21, 2001 (provided as background for Tenet meetings with Rice on Feb. 23 and Mar. 7, 2001).

27. Richard Clarke testimony, Mar. 24, 2004.

28. Mike interview (Dec. 11, 2003) (reading from CIA email, Mike to Winston Wiley Aug. 27, 1997).

29. For President Bush's statement of al Qaeda's responsibility for the Cole attack, see White House transcript, "Address to a Joint Session of Congress and the American People," Sept. 20, 2001 (online at www.whitehouse.gov/news/releases/2001/09/20010920-8.htm).

30. For Pavitt's view, see James Pavitt interview (Jan. 8, 2004).

31. Hugh Shelton interview (Feb. 5, 2004). Zinni was concerned about excessive collateral damage caused by Tomahawk strikes. See Anthony Zinni interview (Jan. 29, 2004).

32. For Shelton's view, see Hugh Shelton interview (Feb. 5, 2004). For Cohen's view, see William Cohen interview (Feb. 5, 2004).

33. Russell Hornore interview (Oct. 29, 2003).

34. James Pavitt interview (Jan. 8, 2004).

35. Ibid.

36. Colfer Black interview (Dec. 9, 2003).

37. Rich interview (Dec. 11, 2003).

38. CIA memo, Tenet to Gordon and others, "Usama Bin Laden," Dec. 4, 1998, p. 2.

39. See, e.g., Joan Dempsey interview (Nov. 12, 2003); Jeff B. interview (Dec. 11, 2003); Louis Andre interview

Exhibit C



U.S. Department of Justice

United States Attorney's Office

Eastern District of Virginia

2100 Jamieson Avenue

703/299-3721

Alexandria, Virginia 22314

FAX 703/299-3981

November 12, 2004

Edward B. MacMahon, Jr.
P.O. Box 903
107 East Washington Street
Middleburg, Virginia 20118

Re: U.S. v. Al-Timimi, Crim. No. 1:04cr385; Discovery Letter #3

Dear Ed:

Thank you for your letter of November 2, 2004, regarding discovery issues. I too look forward to working with you and Alan efficiently and professionally.

With respect to the individual items requested in your letter:

1. You requested copies of Al-Timimi's statements to the United States: I provided you in connection with Discovery Letter #2 all of the FBI reports of interviews with Al-Timimi. Enclosed for your records is a copy of the proffer letter that we provided him in connection with his last interview with the agents; as I mentioned earlier, he sought such protection only with respect to that last interview about possible proactive cooperation to provide information to prevent terrorist attacks.

Regarding a related matter, you are welcome to inspect the copies of your client's various lectures and writings that we have. If you are interested in doing so, you can do so by contacting FBI SA John Wyman, at 202.278.4326, or SA Wade Ammerman, at 202.278.4331.

2. You requested copies of Al-Timimi's statements captured on FISA. FBI SA John Wyman has been in contact with Court Security Officer Christine Gunning to provide these statements to you in classified form on a cd-rom; I expect that they will be available for you as early as Monday, November 15th.

3. You requested the fruits of "any FISA warrants or other non-FISA warrants - -e.g. mail covers or pen registers - - that relate" to your client. Unless these fruits are statements of your client, are exculpatory, or are items we intend to use at trial, I am unaware of any authority for production of such information. We are producing to you the "fruits" that consist of your client's statements. If you notify me of the appropriate authority for the production of other such "fruits," I will promptly revisit this issue.

Letter to Edward B. MacMahon, Jr.

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4. You requested what I understand to be prior statements and fruits of FISA warrants with respect to any of Al-Timimi's co-conspirators. I expect to have available for you next week cd-roms containing all of the phone conversations and e-mails captured pursuant to FISA or other authority for Royer, Khan, Hammad, Caliph, Hamdi, Chapman, Kwon, Hasan, Surratt, and Aatique. Such of this information that was derived from FISA likely will still be in classified form so that you will have to obtain it from Christine Gunning. That being said, I am unaware of any authority for production of such other FISA related information that is not exculpatory. As noted above, if you notify me of the appropriate authority for the production of other such "fruits," I will promptly revisit this issue.

5. You requested the affidavits prepared and filed in support of the FISA warrants that relate to Timimi. As you likely already know, applications which are submitted to, and orders which are issued by, the FISA Court, may not be disclosed by a federal district court if the Attorney General files an affidavit and claim of privilege, unless "such disclosure is necessary to make an accurate determination of the legality of the surveillance." See 50 U.S.C. § 1806(f). Disclosure is, therefore, the "exception" and not the rule. See *United States v. Belfield*, 692 F.2d 141, 149 (D.C. Cir. 1982). Indeed, every federal court that has considered this question has concluded that it is capable of reaching a legal conclusion with respect to the legality of the FISA surveillance at issue without ordering the disclosure of the underlying FISA applications, orders and related materials. E.g., *United States v. Squillacote*, 221 F.3d 542, 553-554 (4th Cir. 2000); see also *United States v. Nicholson*, 955 F.Supp. 588, 592 & n. 11 (E.D. Va. 1997) ("this court knows of no instance in which a court has required an adversary hearing or disclosure in determining the legality of a FISA surveillance") (collecting cases). The situation with the instant case is no different than these other cases. The surveillance at issue in this case was lawfully authorized and lawfully conducted, and no disclosure of the underlying applications and orders will be necessary. We are aware of our discovery obligations and will fully comply with them. For example, as you know, we intend to provide you with access to all of the information that we intend to use during the Government's case-in-chief, as well as to all of the other information to which you are entitled pursuant to *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and its progeny, and the "Jencks Act," 18 U.S.C. 3500. We decline, however, to provide you with copies of the underlying FISA applications and orders.

6. You request information from FBI and/or CIA regarding whether investigations involving foreign governments reflect that Timimi recruited individuals for armed conflict. I am unaware of any authority for producing such information unless it would be exculpatory and in this case, neither the presence or absence of such evidence would be exculpatory. The lack of evidence of his recruiting on other occasions is no more exculpatory to the present indictment than would be the lack of evidence that a defendant indicted for robbing First Union Bank did not also rob First Virginia Bank. That being said, if you tell me that his recruiting of others to fight on other occasions *would* be exculpatory - - and that such evidence is likely to exist - - then I would be willing to so stipulate. Otherwise, such evidence would not be exculpatory and I am unaware of any obligation to search for it for you.

7. You request information regarding the relationship between LET and the governments of the US or Pakistan, on the grounds that if LET was supported by the government of Pakistan which is an ally of the US, then that information would be exculpatory. Absent further explanation from you, we will not be providing such information because on the basis of the information we have now such information is not exculpatory to the indictment of Al-Timimi in any way. Nevertheless, we will

Letter to Edward B. MacMahon, Jr.

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stipulate if you so desire that LET obtained some support from some parts of the government of Pakistan at some times before the United States designated LET as a terrorist organization in December 2001.

8. You request to review the items seized from Timimi's home. As I noted in Discovery Letter #2, all of the items seized from Timimi's home, as well as all of the items seized from the homes of Hamdi, Garbieh, Khan, Hammad, Caliph, Aatique, Surratt, Chapman, and Royer, (and still within our possession) are available for your inspection upon your contacting SA Wyman, 202.278.4326, or SA Ammerman, 202.278.4331.

8. You request the documents backing up the 9/11 Commission report. I am unaware of any authority for production of such information unless it would be exculpatory. That the backup documents encompass the universe of facts within which might exist a factoid you would love to have - - if it existed - - does not entitle you to them.

9. You requested the reports of interview for Mulla Abdus Salam Zaeef and Mullah Muhammad Fadhil, who you indicate may be detained in Guantanamo. The report of interview for Zaeef contains no exculpatory information. I have found no report of interview involving Fadhil.

10. You suggest that we work out a schedule for a deposition of Zaeef and Fadhil. I am unaware of any authority entitling you to take their depositions.

11. You request reports from the computers seized from Timimi. The seized computer was returned to your client. If you still need a copy of what was on that computer, however, we can get you a copy of its mirrored image.

12. You ask for information about expert witnesses. This is to notify you that the United States plans to call to testify David Good and Michael Morrow. Mr. Good is currently Director of the Office of India, Nepal, Sri Lanka, Bhutan, and Maldives Affairs, within the South Asia Bureau of the U.S. Department of State. Mr. Morrow is currently Deputy Director of the Office of Russian Affairs within the Bureau of Europe and Eurasia of the U.S. Department of State. They will testify that the United States was at peace with India and Russia during the period relevant to the Indictment. To the extent that this testimony consists of "expert" testimony, this letter constitutes notice to you that they are expected to be "expert" witnesses.

13. Further, this is to notify you that the United States plans to call Robert Andrews to testify at the trial to describe the course of the war in Afghanistan from September 12, 2001, through approximately November 30, 2001. To the extent that his testimony consists of "expert" testimony, a description of his qualifications is enclosed. I expect him to testify to essentially the following facts:

Immediately after 9/11, the United States demanded that the Taliban turn over Bin Laden. On September 12, 2001, the Bush administration won NATO support for a possible strike against Usama bin Laden and his supporters in Afghanistan, and was pressuring Pakistan for intelligence and logistical backing. That same day, the Taliban was bracing for an

Letter to Edward B. MacMahon, Jr.
 November 12, 2004
 Page 4

imminent attack by the United States and sent its top leader Mullah Mohammad Omar into hiding.

After the Taliban refused those demands, the United States and allied forces entered Afghanistan and engaged the Taliban in combat to prevent it from allowing Al-Qaeda to use Afghanistan as a base for terrorist acts against the United States and around the world. American troops started the ground war against the Taliban on or about October 20, 2001. On or about October 21, 2001, American commandos seized an airfield in southern Afghanistan and then raided a compound of Taliban leader Mullah Mohammed Omar. On or about November 10, 2001, the Taliban lost the key city of Mazar-e-Sharif, and the northern provincial capitals of Shibarghan, Aybak, and Maimana. By November 11, 2001, the Taliban was being routed through northern Afghanistan. On or about November 13, 2001, the Taliban withdrew from the Afghan capital of Kabul and Northern Alliance forces allied with the United States took control of the city. By November 15, Taliban forces had retreated to Kandahar.

4. We expect to call John Miller to authenticate a videotape as a depiction of Usama bin Laden (the videotape is a depiction of bin Laden making the statement a written version of which was found in Masoud Khan's residence in May 2003). We are in "possession" of a prior relevant statement of Miller about how he met Bin Laden in the sense that we downloaded it from the internet. I figure that you can do the same, at http://www.esquire.com/features/articles/2001/010913_mfe_binladen_1.html.

Naturally, we wouldn't need John Miller to authenticate the videotape if you would agree that the document found in Khan's house was a translation of bin Laden's speech aired on October 7, 2001, or that the individual in the tape is, in fact, Bin Laden, or that if Miller were called to testify, he would say that he met Bin Laden and that the individual in the tape appears to be Bin Laden. I'm sending you by email the video of the Bin Laden speech when I send you the email of this letter.

14. This letter further is to inform you that we intend to use the services of translators Hany A. Iskandar, Alex Daghestani, and Zahid Siddiqui as Arabic and Urdu translators in the upcoming trial. Mr. Iskandar is an Arabic language specialist with the FBI, and was qualified as an expert in translating from Arabic to English (and vice-versa) during the *U.S. v. Khan* trial. Their summaries of qualifications are enclosed.

15. This is to notify you that the United States plans to call as an expert witness to testify at trial Evan F. Kohlmann. Mr. Kohlmann is a Magna Cum Laude graduate of Georgetown University, with a major in International Politics, a concentration in International Security Studies, and a minor in Islamic Studies from the Center for Muslim Christian Understanding. He is the author of *The Legacy of the Arab Afghans: A Case Study*, Georgetown University International Politics Honors Thesis, Spring 2001, and the book, *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*, released by Berg Publishers/Oxford, United Kingdom, earlier this year. A copy of his resume is enclosed with this letter.

Letter to Edward B. MacMahon, Jr.

November 12, 2004

Page 5

I expect Mr. Kohlmann to testify as an expert on the origins of the Arab-Afghans, Al-Qaida, the Taliban, and Lashkar-e-Taiba. I expect him to testify as an expert regarding the relationship between jihad fighters in Bosnia, Pakistan, and Afghanistan, and the connections between Lashkar-e-Taiba, the Taliban, and Al-Qaida, and the history of Usama bin Laden and Al-Qaeda's war against the United States before 9/11. I expect Mr. Kohlmann to testify that, from about 1995 until late 2001, the Taliban was the political/military entity headquartered in Kandahar, Afghanistan, that exercised de facto control over portions of the territory of Afghanistan until its defeat in late 2001 and early 2002 by a multi-national coalition that included the United States. I expect him to identify a videotape as a depiction of Usama Bin Laden; I expect an Arabic translator to translate the speech of Bin Laden into English, which I expect will match the translation of the speech made in October 2001 and found in the house of Masoud Khan.

Mr. Kohlmann is also an expert in accessing and interpreting information found on the internet. I expect him to testify about the information released on the internet by Lashkar-e-Taiba between 1999 and 2001. I expect him to testify that, by September 13, 2001, it was widely reported that the Bush administration won NATO support for a possible strike against Bin Laden and his supporters in Afghanistan. Finally, I expect him to testify that, that same day, newspapers further reported that the Taliban was bracing for an imminent attack by the United States and sent its top leader Mullah Mohammad Omar into hiding. A synopsis of much of his proposed testimony is enclosed with this letter.

This letter also is to document that I am providing you on email various papers written by Evan Kohlmann, as well as his book. The items included are:

- The cover of Mr. Kohlmann's book, *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*;
- Mr. Kohlmann's book, *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*,¹
- *A Web of Terror*, Journal of Counterterrorism, Vol. 6, No. 3, Spring 2000
- *A Bitter Harvest: The Soviet Intervention in Afghanistan and its Effects on Afghan Political Movements*
- *The Ideological Evolution of the Committee for the Defense of Legitimate Rights (CDLR)*.
- *An Afghan Ghazi: The Modernization and Reforms of Amir Amanullah Khan*
- *Legal and Investigative Loopholes in Modern Cyberterrorism Cases*
- *400 Years of Colonization: the Ottomans vs. the French in Algeria, 1519-1919*

¹ Provided in electronic form by e-mail only.

Letter to Edward B. MacMahon, Jr.

November 12, 2004

Page 6

I suspect that we probably could reach agreement on some or all of the facts underlying the testimony of David Good, Michael Morrow, Robert Andrews, John Miller, Hany Iskandar, Alex Dagestani, Zahid Siddiqui, and Evan Kohlmann, and I welcome your interest in doing so.

In addition to the items listed above that you requested in your letter, this letter is to notify you that we have no reports of physical or mental examination, scientific tests or experiments, that we plan to present in our case, and are aware of none in our possession that are material to your case.

Thank you for your cooperation.

Sincerely,

Paul J. McNulty
United States Attorney


By: 
Gordon D. Kromberg
Assistant United States Attorney

Exhibit D



U.S. Department of Justice

United States Attorney's Office

Eastern District of Virginia

2100 Jamieson Avenue

703/299-3721

Alexandria, Virginia 22314

FAX 703/299-3981

December 28, 2004

Edward B. MacMahon, Jr.
P.O. Box 903
107 East Washington Street
Middleburg, Virginia 20118

Re: U.S. v. Al-Timimi, Crim. No. 1:04cr385; Discovery Letter #8

Dear Ed:

1. I am ready to provide you cd-roms containing emails and phone calls of other conspirators in this case, which emails and phone calls were captured by FISA. I do not believe that they contain exculpatory evidence in addition to that which you already have obtained (*i.e.*, exhibits introduced in the last trial including self-serving statements by Royer and Hammad). You may find them useful because they may contain previous statements of potential witnesses. They have been declassified. That being said, they *were* captured by FISA, and I am authorized to give them to you only for use in connection with this trial. Accordingly, I will provide them to you if you represent to me that you will not make copies of them (or allow copies of them to be made) except for use in connection with this trial, and that at the end of the trial you will return the original cd-roms and all copies that may have been made from them.

If you agree with these terms, I can provide to you 11 cd-roms containing materials involving Masaud Khan; four cd-roms containing materials involving Aatique, one cd-rom containing materials involving Chapman, six cd-roms containing materials involving Royer, and 11 cd-roms containing materials involving Hamdi.

2. You have received the cds with the telephone calls and emails that were captured under the FISA surveillance over Timimi. Of these calls, eight have been declassified. They include four calls to same number about the Space Shuttle article, on 1/31/03 and 2/1/03 (including one call consisting of Timimi reading the article to his listener), one call that was an exhibit at the last trial, with Hammad and Royer calling Timimi; one call that was consensually-monitored, from Kwon to Timimi, for which you already have the transcript in the *Brady* scan materials, and one call with Royer about a press conference.

3. I am providing you herewith additional documents for your use in the SCIF under the condition that - - absent specific consent in writing from me - -they may not be copied again and

Discovery Letter #8
 December 28, 2004
 Page 2

that they may not be taken out of the SCIF except to return them to me. This new material consists of:

FBI 302, report of interview of Randall Royer	Dec 8, 2004	2	03445-03446
FBI 302, report of interview of of Hasan	Dec 2, 2004	1	03447
FBI 302, report of interview of Kwon	Dec 1, 2004	1	03448
FBI 302, report of interview of Hasan	Nov 23, 2004	1	03449
FBI 302, report of interview of Kwon	Nov 19, 2004	1	03450
FBI 302, report of interview of Hasan	Oct 6, 2004	1	03451
FBI 302, report of interview of Hasan	Nov 17, 2004	1	03452
FBI 302, report of interview of Kwon	Nov 16, 2004	1	03453
FBI 302, report of arrest of Ali Al-Timimi	Sep 24, 2004	1	03454

4. You previously asked about Timimi's intercepted emails in the case in the Northern District of New York. That wiretap was a Title III wiretap. As a result, much of the take was minimized. I am advised that there were a total of nine emails captured pursuant to a Title III wiretap. Only two messages were not minimized, and I have provided both of them to you with this letter. The other seven were minimized, so they are maintained under seal by the court in New York. No one (other than your client, of course) can say what is on the seven minimized emails (other than that they were not relevant to what the listeners were listening for) and they are not available absent a court order from New York. As you can see, the two that were not minimized seem inconsequential, so it is hard to imagine how little the other seven that did not merit keeping must have had.

5. Be aware that what your client said in his interviews with the FBI in 2003 and 2004 will be introduced to show his intent, and an absence of mistake. These statements include the following:

Timimi is familiar with LET and its leader, Hafiz Sayeed. Timimi's religious belief system is similar to that espoused by the organization comprising the LET and the Markaz ad Dawa. Timimi was aware of the LET's annual conference. Timimi was aware that Royer had established the Taiba Bulletin and helped set up the website. Timimi used to visit the LET website regularly and receive the Taiba Bulletin over the internet but removed his name from the mailing list once LET was designated as a terrorist organization. Tapes of his lectures were posted on the LET website. Abu Bara indicated in an e-mail to Timimi that he and Timimi knew each other. Timimi stated that a Muslim can lie when a Muslim is at war.

On 9/11, Timimi spoke at Dar al Arqam about the events of the day, and said that sometimes killing innocents is justified Islamically. There is no question that warfare is part of the Islamic law and religion. One cannot deny that. Islam is not a pacifist religion. War is an

Discovery Letter #8
 December 28, 2004
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integral part of Islam. There are conditions however, to whether one's participation in jihad is authentic. Jihad is broken down into a communal and a non-communal obligation. A non-communal or individual obligation to participate in jihad can occur when the leader of the Muslims calls you up to fight. When a country is attacked by an outside force, it is also obligatory for Muslims in neighboring countries to assist those in the country being attacked by the oppressor, if those within the country being attacked cannot defend themselves adequately. Attacks carried out with good intentions and with the intended result being of some benefit to muslims or harm to unbelievers should not be considered suicide in Islam.

~~Rules related to obligatory jihad should not be confused with the rules related to whether~~ participation in a jihad is legitimate or permissible. Whether an individual's participation in a particular jihad is permissible or considered legitimate from a religious perspective is a theoretical question based on a number of different conditions. An individual who died on the battlefield would receive the rewards due to a martyr if the appropriate conditions were met. "Those who die on the battlefield are the best of martyrs". Timimi sent to his brother the article, "An American Born Shaheed, An Example for All of Us."

Many considered Mullah Omar as potentially as the leader of Muslims. Timimi's evaluation of Omar and the Taliban was contained in his paper entitled "Shaikh Ali Timimi on the Taliban and the Statues", by "Shaikh Ali Timimi, 7 March 2001"

In his lecture, "The Role of Muslim Students in North American Universities," Timimi said that if individuals possessed a special skill for jihad like that possessed by an army general, then such individuals would have no choice but to go and fight in jihad to assist muslims fighting disbelievers.

Timimi studied under Hawali in Medina, and considers his views to be in line with Hawali's. Timimi called Hawali shortly after 9/11 for Hawali's take on recent events. Timimi sent the email of 12/13/01, subject, "A call to reflect and repentance." When Timimi mentioned Hawali's declaration in that email, he was adopting Hawali's views as his own.

6. Be aware that what your client has said in public lectures may be introduced to show his intent, and an absence of mistake. These statements include the following:

In "The Principles of Fiqh: The Voluntary Acts of Worship," he said that if the enemy is in front of us, the best act of worship is to fight in jihad. In "Purification of the Soul," he said that it is not enough to want to know what is going on in Chechnya or Kashmir and to read a web site, it is crucial to go forth. Jihad is fighting in the path of Allah. Allah loves those who wage jihad in his path. In "The Luminous Creed," he said that the Muslims should emulate those that fight their enemies, not in a theoretical sense, but in a literal sense. The greatest expression of Islamic belief is jihad. In "A Word of Advice to the Salafis of the UK," Timimi said that there is obviously a jihad going on today. Waging jihad is an unceasing obligatory duty until the Day of Resurrection. In "The Acts of Worship During Shawwal," he said that Allah hates those who have the means to wage jihad, but fail to do so.

Discovery Letter #8

December 28, 2004

Page 4

In "Signs Before the Day of Judgment," "Faith, Divine Decree, Prophets Companions, Family and Wives), and "A Word of Advice to the Salafis of the UK," Timimi said Muslims are obligated to pledge allegiance to a Muslim ruler, even if that ruler is unjust. They cannot pledge allegiance to any leaders in the US because there are no Muslim leaders. In "Was History Violated When Buddha's Statues Were Annihilated," Timimi said that the only way for Muslims to prevail is through the banner of jihad to be raised and to follow shariah. Appeasement has not worked for 200 years. In "Tawheed and Shirk," Timimi spoke about the final battle where the trees and rocks come alive.

7. Be aware that what your client advised Kwon regarding Kwon's consideration of becoming an American citizen (as described by Kwon in the last trial) may be introduced to show his intent, and an absence of mistake.

8. If I have not mentioned this before, please note that I intend to ask Evan Kohlmann to testify regarding the relationship between Hawali and bin Laden. As you know, bin Laden based his declaration of war against the United States on the grounds that the Saudis incarcerated Hawali at the behest of the Americans.

9. In your letter of December 14th, you requested that I identify *Brady* and *Jencks* materials from the materials provided for your examination in the SCIF as soon as possible. Except as otherwise noted in this series of letters, I am aware of no *Brady* materials. If your motion for a continuance is denied on December 30th, I expect to have the list of *Jencks* materials for you by January 3rd; after that time you can take the listed documents out of the SCIF and let your client read them if you and he so choose. However, all *Jencks* materials (and all copies of such materials) must be returned to me after the trial; if that condition is unacceptable, then we will have to get it resolved by the judge before I can provide you the list of *Jencks* materials.

10. I have asked the agents to identify materials that can be returned to your client. My understanding is that they are doing so.

11. With respect to the issue about Mullah Omar calling for troops, I reiterate my offer to stipulate to the newspaper articles that you submitted to the court in connection with your discovery motion.

12. I do not know what to tell you about your inability to open the DVD with the email files on it. I gave you my copy of the DVD when you said that you couldn't open the original DVD I gave you; I gave you mine after opening it and reading random emails on my office pc. I have more copies of the Terrorism: Review of 1999 cd which you are welcome to if you want (but as I mentioned, its only relevance is that it contains a snippet of Royer asking a question about terrorism).

Discovery Letter #8
December 28, 2004
Page 5

13. You asked about records from Yahoo dealing with Al-Timimi's email traffic, and whether we could segregate out those emails that we believe that Al-Timimi wrote or received himself. On the DVD that I already gave you, you can find his emails from his myself.com account segregated together. Also, by doing a word search for your client's email addresses through your word processing program, you can find the emails from or to him in the accounts of the individuals whose accounts were seized in connection with this case. I understand that this procedure is useless unless you can open the DVD, but as I said, I opened it just fine on my pc.

14. Your inquiry regarding Timimi's Yahoo and Hotmail records is likely moot in light of the provision to you of materials in the SCIF.

15. You asked about our position regarding FISAs containing the voice of your client. Our position is that we will either provide you such recordings as exist, or in limited circumstances, not do so through utilization of CIPA, or, in other limited circumstances, not do so after determining that they are not relevant under Rule 16. The statement of this position also is responsive to your question regarding a recording of Alaqi.

Thank you for your cooperation.

Sincerely,

Paul J. McNulty
United States Attorney

By:



Gordon D. Kromberg
Assistant United States Attorney

From: "RAD" <rdhafir1@twcny.rr.com>
To: "Ali Timimi" <altimimi@myself.com>
Sent: Sunday, May 19, 2002 6:36 PM

assalamu alaikum

Did not find you at home.

can you please call me tonight 315-637-3945 or give me a number to call you at.

jazaka Allahu khairan

Rafil

12/21/2004

From: "RAD" <rdhafir1@twcny.rr.com>
To: "Ali Timimi" <altimimi@myself.com>
Sent: Saturday, May 11, 2002 4:28 AM
Subject: Fw:

I am re-sending this in case you did not receive it the first time. I had no response from you.

Rafil

----- Original Message -----

From: RAD
To: Ali Timimi
Sent: Thursday, May 09, 2002 10:41 PM

assalamu alaikum

I sent an Email to Yusuf Jaafar Idris to see if he can speed up my visa to Jedda, I sent my passport and the documents today for a business visa and should arrive noon Friday insha Allah. He did not respond and I don't know how to get in touch with him.

Do you know someone in the Saudi Embassy to speed it up?

Jazaka Allahu khairan

Rafil

!

12/21/2004

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/09/2004

RANDALL TODD ROYER, date of birth 03/25/1973, Social Security Number 493-88-5525 was interviewed at the United States Attorney's Office of the Eastern District of Virginia, located in Alexandria, VA. Also present during the interview was Department of Justice Trial Attorney John Gibbs.

During this interview, ROYER answered questions from John Gibbs in preparation for ROYER's anticipated testimony at the trial for ALI AL-TIMIMI in the Eastern District of Virginia.

After being advised as to the identity of the interviewing Agents and the nature of the interview, ROYER provided:

ROYER saw a national news broadcast on either 09/13 or 09/14/2001. The news cast reported that Mullah Omar, the leader of the Taliban, was not asking for people to come fight in Afghanistan. ROYER thought the telecast was on CNN or perhaps Tom Brokaw, but he could not recall with certainty. ROYER watched the news cast in the conference room at CAIR. ROYER was confident the timing of this broadcast was before the 9/16 dinner meeting with Timimi. ROYER was certain that he saw the story in the CAIR conference room. After the 9/16 meeting ROYER was preparing to leave the US, as a result, he did not spend much time at CAIR after the 9/16 meeting. ROYER noted that if someone had stated at the 9/16 dinner meeting that Mullah Omar was calling for assistance, ROYER would have stood up and pointed out that he had seen the news story in which Mullah Omar was not calling for fighters.

ROYER recalled that Mullah Omar had still not called for fighters into late October, perhaps early November 2001. ROYER saw a similar news story on the Internet, possibly a BBC piece, that reiterated that Omar did not want fighters. At this time ROYER was in Bosnia and was communicating, via instant messenger, with Abu Baraa at LET. ROYER was attempting to get a visa for Pakistan. Abu Baraa told ROYER that there were people at LET who wanted to go to Afghanistan, but LET would not allow them to go. Some of the Arabs "rebelled" when they were told they could not go to Afghanistan. Abu Baraa added that the Taliban was not allowing anyone to come into Afghanistan. ROYER recalled that this was at a time when the US Forces were "kicking butt." It was only near the

Investigation on 12/08/2004 at Alexandria, VA

File # 315N-WF-226192-303 -945 Date dictated _____

by SA James R. Sobchack:jrs

SA F. Wade Ammerman

03445

(Rev. 10-6-95)

315N-WF-226192

Continuation of FD-302 of RANDALL TODD ROYER, On 12/08/2004, Page -2-

very end, just prior to the collapse of the Taliban, that the borders were opened up. ROYER recalled that volunteers entered from places like Waziristan, but many were killed before they could join the fight, since they had no training, they were easy to kill.

ROYER spoke to Masoud Khan while both were in the Alexandria lock up. KHAN confirmed that there were some Arabs who wanted to go to Afghanistan, but were refused.

ROYER was not able to provide information about LET funding activities, Hawalas, or other individuals who may be involved with money laundering in the Washington DC Metro area.

03446

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/07/2004

On 12/02/2004, KHWAJA MAHMOOD HASAN, date of birth 03/24/1976, social security account number 227-65-9622, was interviewed at the Alexandria Police Department, Alexandria, Virginia, by Detective Constable Kenneth Mcaulay and Detective Constable Martyn Smith, New Scotland Yard (NSY), SO13, Anti-Terrorist Branch. Present during the interview of Hasan were Special Agents John V. Wyman, F. Wade Ammerman, and Christopher P. Mamula.

On 12/03/2004, Hasan was again interviewed by Detective Constable Kenneth Mcaulay at the Alexandria Police Department. Present during this interview were Special Agents Wyman and Ammerman. During this interview, Hasan reviewed a written statement prepared by NSY Detectives in follow-up to their interview of Hasan on 12/02/2004. Hasan reviewed the statement and before affixing his signature to ~~the last~~ ^{each} page.

Investigation on 12/03/2004 at Alexandria, Virginia

File # 315N-WF-226192-302 ⁹⁴¹

Date dictated NA

by SA F. Wade Ammerman

SA John V. Wyman

03447

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/07/2004

On 12/01/2004, YONG KI KWON, born on 12/31/1975, was interviewed at the Alexandria Police Department, Alexandria, Virginia, by Detective Dave Field and Detective Ray Thomas, New Scotland Yard (NSY), SO13, Anti-Terrorist Branch. Present during the interview of Kwon were Special Agents John V. Wyman, F. Wade Ammerman, and James R. Sobchack.

On 12/03/2004, Kwon was again interviewed by Detectives Field and Thomas at the Alexandria Police Department. Present during this interview were Special Agents Wyman and Ammerman. During this interview, Kwon reviewed a written statement prepared by NSY Detectives in follow-up to their interview of Kwon on 12/01/2004. Kwon reviewed the statement and made pen and ink changes before affixing his signature to ~~the last page.~~
each

Investigation on 12/01/2004 at Alexandria, Virginia

File # 315N-WF-226192-302 ⁹⁴⁰

Date dictated NA

by SA F. Wade Ammerman
SA John V. Wyman ⁹⁴⁰

03448

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/23/2004

KHWAJA MAHMOOD HASAN, date of birth 03/24/1976, social security account number 227-65-9622, was interviewed at the Alexandria Police Department, Alexandria, Virginia, by Special Agent John V. Wyman, Special Agent Christopher P. Mamula, and Department of Justice Trial Attorney John Gibbs.

During the this interview, Hasan answered questions from John Gibbs in preparation for Hasan's anticipated testimony at the trial for ALI AL-TIMIMI in the Eastern District of Virginia.

During this interview, the following new information was provided by Hasan:

Hasan clarified for the interviewing agents that at the time of the Kwon dinner meeting, Hasan did not realize the fatwa which Al-Timimi read from was authored by Sheikh UQLA. Hasan later determined that the Uqla fatwa was the one Al-Timimi read from, as a result of interviews with the FBI prior to the previous trial.

Prior to Hasan's and Kwon's departure for Pakistan, Al-Timimi recommended that Hasan and Kwon keep their distance when traveling through airports, purchase magazines to maintain the appearance of a common traveler, and cry like a baby if confronted by security. Hasan and Kwon used the techniques recommended by Al-Timimi by keeping separate and purchasing magazines. While traveling through Dulles International Airport Hasan was questioned by security. Kwon was not with Hasan at the time. Hasan thinks that officer was trying to determine whether Hasan's name appeared on a list.

Investigation on 11/19/2004 at Alexandria, Virginia

File # 315N-WF-226192-302 - 936 Date dictated NA
 by SA Christopher P. Mamula
SA John V. Wyman

03449

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/23/2004

On 11/19/2004, at the Alexandria Detention Center, YONG KI KWON, born on 12/31/1975, was presented with a two-page Statement, dated 11/17/2004, prepared by the Australian Federal Police. Following his review, Kwon advised that the information contained in the Statement was correct and thereafter signed the bottom of both pages of the Statement. Kwon's signature was witnessed by Special Agent John V. Wyman. Also present during Kwon's review of the Statement was Assistant United States Attorney Gordon D. Kromberg.

Investigation on 11/19/2004 at Alexandria, Virginia

File # 315N-WF-226192-302 935 Date dictated NA

by SA John V. Wyman [Signature]

03450

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/23/2004

On 10/06/2004, KHWAJA MAHMOOD HASAN, date of birth 03/24/1976, social security account number 227-65-9622, was interviewed at the Cumberland Federal Correctional Institution (FCI), Cumberland, Maryland, by Special Agent John V. Wyman and Department of Justice Trial Attorney John Gibbs.

During the initial portion of the interview, Hasan answered questions from John Gibbs in preparation for Hasan's anticipated testimony at the trial for ALI AL-TIMIMI in the Eastern District of Virginia.

Separate from trial-prep questions, Hasan advised that he has not had any personal experience in sending money to Pakistan via money transmitters. Hasan does not know how Lashkar-e-Taiba (LET) raises funds and does not know where LET banks.

Investigation on 10/06/2004 at Cumberland, Maryland

File # 315N-WF-226192-302 - 934 Date dictated NA

by SA John V. Wyman

03451

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/23/2004

On 11/17/2004, KHWAJA MAHMOOD HASAN, date of birth 03/24/1976, social security account number 227-65-9622, was interviewed at the Alexandria Police Department, Alexandria, Virginia, by officials from the Australian Government. The officials from the Australian Government included Barrister Geoffrey Bellow, Public Prosecutor June Philips, and Federal Agent Lam Pakstun. Also present during the interview were FBI Special Agents John V. Wyman and Christopher P. Mamula.

At the conclusion of the interview, Hasan was presented with a one-page Statement, dated 11/17/2004, prepared by the Australian Federal Police. Following his review, Hasan affixed his signature to the bottom of the statement.

Investigation on 11/17/2004 at Alexandria, Virginia

File # 315N-WF-226192-302 - 833

Date dictated NA

by SA Christopher P. Mamula
SA John V. Wyman JW

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/23/2004

On 11/16/2004, YONG KI KWON, born on 12/31/1975, was interviewed at the Alexandria Police Department, Alexandria, Virginia, by officials from the Australian Government. The officials from the Australian Government included Barrister Geoffrey Bellew, Public Prosecutor June Philips, and Federal Agent Lam Pakstun. Also present during the interview were FBI Special Agents John V. Wyman and F. Wade Ammerman.

Investigation on 11/16/2004 at Alexandria, Virginia

File # 315N-WF-226192-302-932 Date dictated NA
by SA F. Wade Ammerman
SA John V. Wyman

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- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/28/2004

At approximately 9:00 a.m. on 09/24/2004, ALI MEHDI AL-TIMIMI, white, male, DOB: 12/14/1963, SSAN: 577-98-3035, FBI Number 786423JB9, of 4106 Meadow Field Court, Fairfax, Virginia, was arrested without incident at the FBI, Washington Field Office, 601 4th Street, Northwest, Washington, D.C. Al-Timimi was accompanied by his attorneys James Van and Todd Gallinger.

The arresting Agents consisted of Special Agent (SA) John V. Wyman, SA F. Wade Ammerman, and SA Sarah Linden.

After his arrest processing at WFO, Al-Timimi was transported by SAs Wyman and Linden to the United States District Courthouse in Alexandria, Virginia, where he was remanded to the custody of the United States Marshal Service.

Investigation on 09/24/2004 at Washington, D.C.

File # 315N-WF-226192-302 - 915 Date dictated NA
by SA F. Wade Ammerman
SA John V. Wyman

03454

Exhibit E

MER 04019894

MEMORANDUM FOR THE RECORD

Event: **Duncan Wainwright, Assistant Division Counsel, WFO, FBI**

Type of event: Interview

Date: August 13, 2003

Special Access Issues: None

Prepared by: Peter Rundlet

Team Number: 6

Location: FBI, Washington Field Office

Participants - Non-Commission: Sean O'Neill, Assistant General Counsel

Participants - Commission: Lance Cole and Peter Rundlet

Background. Duncan Wainwright graduated from Valparaiso School of Law in 1979. He came to the FBI in 1982 as an Agent, starting in the Chicago Field Office. In 1983, he was sent to the Hickory, North Carolina Resident Agency and in June, 1984 he came to the Washington Field Office (WFO) as a street crime Agent. In 1987, Wainwright went to FBI Headquarters (HQ) as a Supervisor in the Organized Crime Section. From 1991-92 Wainwright had a brief "stint" in the Civil Litigation Unit of the Office of the General Counsel (OGC). In 1992, Wainwright returned to the WFO to be an SSA in charge of a Labor Racketeering squad. In 1994, Wainwright switched to the Healthcare squad. He later became "Inspection Certified" and in 1999, he rotated to the Office of Division Counsel at WFO. There are four counsels in the office at WFO: he is the Assistant Division Counsel (ADC) for Foreign Counterintelligence (FCI) and Counterterrorism (CT); another does FOIA, one does administrative law and civil litigation; and one does criminal advice and training, and this person does most of the "Title III" work.

Job Description, Pre-9/11. National security has been the focus of Wainwright's work since 1999. Wainwright had to seek a detail to the National Security Law Unit (NSLU) at HQ for six weeks for "immersion training" to get up to speed. Prior to 9/11, the NSLU had 9 attorneys; now it has 25. The Unit Chief for the NSLU was Mike Woods until about a year ago; Woods had Wainwright sit in on the weekly Unit meetings and he continues to attend those to this day. Prior to 9/11, Wainwright assisted Agents with Foreign Intelligence Surveillance Act (FISA) applications on the National Security Division (NSD) side, as well as compulsory process National Security Letters (NSLs). He frequently provided operational guidance to NSD Agents. Agents on the NSD side were "confused" about dealings with the US Attorneys Office and he acted as a liaison with the Office of Intelligence Policy and Review (OIPR), who he called "the enforcers of the Wall." He also had some odd administrative duties [REDACTED]

The Wall. Before the Foreign Intelligence Surveillance Court of Review opinion that tore down the Wall, Wainwright said the Wall was clearly in place, entrenched, and rigorously

enforced by OIPR. There is significant discussion of the Wall issue and how the Wall was "killing the FBI" in the Bellows Report, done by Randy Bellows on the Wen Ho Lee case. Wainwright said that he "was surprised to learn of the Wall" since he came from an organized crime background. Wainwright said that there was limited sharing of FISA or non-FISA information between Intelligence investigations and criminal. Wainwright stated that David Cris wrote an internal DOJ monograph on the Wall and provided testimony on the Hill. During this era, Wainwright helped guide compliance and he attempted to make operational progress by using the exceptions.

The Wall had a very significant effect on the FBI's Counterterrorism (CT) and Counterintelligence (CI) activities because they "couldn't deal with the criminal guys." Wainwright mentioned the "primary purpose" test which was built into the FISA. As a precautionary measure, they disallowed CI and CT agents from talking to the criminal agents (they feared that if they talked to the criminal agents, they might be suspected of not having foreign intelligence as the "primary purpose" of the FISA. For every case involving a U.S. person, a Letterhead Memorandum (LHM) was submitted to OIPR. Wainwright believed there were LHMs on non-U.S. persons as well, but that this was less stringent. Prior to the Patriot Act, there was no clear-cut mechanism to share information with the criminal side. Wainwright stressed the irony of this

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9/11 Classified Information

Attorney General Guidelines. Wainwright said that there were three applicable AG Guidelines: (1) the July, 1995 AG Guidance (from Reno); (2) the 2000 Deputy AG Guidance, which clarified the earlier AG Guidance; and (3) the early 2001 Guidance, which explained the prior two.

FISAs prior to 9/11. Prior to 9/11, the FBI ran lengthy Form 199 intelligence cases, where they tried to keep track of individuals and disrupt them, but generally not criminal prosecutions. Deportation under the Absconder Program was an option, but it was not a strong tool. Prosecution on small matters (e.g., food stamp fraud) was used only very infrequently because of the concern that the FBI could be accused of using a FISA to make a petty crime case.

Before 9/11, Wainwright said that they would submit "50-page tomes" for affidavits to make clear that no criminal investigations were going on. They would write "even 30 pages" for

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LHMs. The purpose of the LHM was to identify the nature of your investigation. Wainwright said that "sometimes criminal activity ended up in the LHM, but it was not required until 2002." The LHM was also required to keep HQ and OIPR apprised of all intelligence investigations. Wainwright noted that OIPR has an oversight function for all intelligence cases.

OIPR/Oversight. OIPR processes warrants and provides guidance on investigations. Occasionally, Wainwright said, OIPR would advise the FBI to close certain cases. Wainwright said that there was a general perception that the Wall was "crazy," and that it hampered them. They felt like they fought the battle and lost. Agents feared that they would be sanctioned by the Intelligence Oversight Board, which is a Presidential entity that could sanction the agents

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personally. "There was a sense that discipline was not meted out fairly between higher-ups and agents."

The Wall was clearly one-way from the intelligence (NSD) side to the criminal side. Going the opposite way, Grand Jury information under Rule 6(e) and Title III was also limited in what they could share, but not nearly as tight a restriction in this direction. Wainwright said that the Wall even affected personal relationships between criminal and intelligence agents.

FISA Application Process. Prior to 9/11, agents would first have to draft lengthy LHMs requesting that a FISA be done, and they would include a lot of information. Then, the LHM was sent to a GS-14 counterpart at HQ, who would then have to craft the LHM into an affidavit that showed probable cause – "but it was really a higher standard: beyond certainty." From there, it would go to the NSLU to get edited and blessed. They had to craft it into the proper format before sending it to OIPR. Wainwright said this process took months. OIPR then took time to review the application. Prior to 9/11, they had other priorities. [REDACTED]

[REDACTED] But, Wainwright noted, this takes up the AG's time and the Court's time [REDACTED]

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NSLs. Before the Patriot Act, National Security Letters were limited to 3 types of entities: (1) phone carriers and Internet Service Providers; (2) financial institutions (those listed in the Right to Privacy Act; specifically, banks and credit unions, not casinos, brokerage houses, pawn shops, etc.); and (3) credit reporting companies (they can get accounts, addresses, and employment, but not balances). Since 9/11 the scope of NSLs has not changed, although the standard has changed. Before 9/11, they had to have specific articulable facts and circumstances that X was engaging in terrorism, for example. The Assistant Director in Charge (ADIC) had to certify them. The WFO did their own, but for the other non-ADIC offices, the requests had to be sent to HQ and "it would take months to get an NSL." Wainwright noted that 18 U.S.C. 2709 has the provisions for NSLs for phones.

The new standard is that the information sought would be relevant to a case pertaining to CFI or CT (a relevance standard). Also, under the new standard, an SAC can certify to this, which makes it a lot easier, process-wise. At present, though, authority for NSLs is still limited to the 3 areas listed. [But note that there is legislation that greatly expands the definition of "financial institution" in the 2004 Intelligence Authorization bill extending the reach to casinos, pawn shops, etc.] Wainwright complained that even under the lower standard there are many things an agent cannot get in an intelligence case that they can easily get in a criminal case under a Grand Jury subpoena.

Mail and Trash Covers. Wainwright said that the SAC can request that the Postal Service copy the outside of letters for 30 days, when the request is made for a criminal case. This is run by the Postal Inspectors. On the national security/intelligence side, the FBI makes a

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request of the AG to get a 90-day mail cover. The AG, through OIPR, must sign off on the request. An LHM is required to get a mail cover for intelligence purposes. Wainwright said that the SAC can sign off on a request for a trash cover since there is a lower expectation of privacy when it comes to trash.

Wainwright said that there is currently a problem with the Postal Service on mail covers. According to Wainwright, the Postal Service has the authority to turn down requests for mail covers by the AG, and sometimes rejects the request. Wainwright said that this is a recurring problem now. Wainwright said that Jack Livingston, the Unit Chief of the NSLU, is dealing with the Postal Service on this.

Patriot Act & the "199 Order." Wainwright said that Mike Woods, who is currently with MZM, a Department of Defense contractor that focuses on terrorism, was the primary FBI person involved with drafting the Patriot Act. Wainwright said that as a practical matter, the Wall did not come down until the FISA Court of Review opinion. The FISA Court of Review (which is the appellate court for FISA issues, and which has only been convened this one time) actually rewrote the AG Guidelines. But this came later. After the Patriot Act, the Foreign Intelligence Surveillance Court (FISC, which is the first-level court for FISA issues) reestablished the Wall to some extent. Thereafter, the FISA Court of Review reversed the decision and took down the Wall. Even before the FISA Court of Review opinion, however, the FISC had issued an order approving a request by the Terrorism and Violent Crime Section (now, the Counterterrorism Section) of the Criminal Division to have their attorneys review the FBI's Form 199 (terrorism intelligence case) investigation files for the purpose of identifying any criminal violations that suspected terrorists could be charge with. This was called the "199 Order." So, the DOJ attorneys reviewed the FBI's 199 files, primarily at HQ, according to Wainwright. When the Wall finally came down after the FISA Court of Review's opinion, Ashcroft established a policy to have AUSAs come over and review the FBI's 199 files to identify "any violation." The idea was to use every tool available. Wainwright said that not many criminal cases came out of this effort, but the Virginia Jihad case did.

Class 199, 265, & TEI Investigations. Class 199 cases are terrorism *intelligence* cases, and they are worked under the AG Guidelines for FCI and CT (the "FCI guidelines," which are classified and have been unchanged since Reno). Class 265 cases are terrorism *criminal* cases, and they are worked under the AG Guidelines for General Crimes in Terrorism (these were changed in April or May, 2002). So, Wainwright emphasized, there are two different sets of guidelines that apply to terrorism cases.

Wainwright said that HQ's position was that the FBI can work 199 cases under the Guidelines and if there is a criminal aspect to the case, then the agents can open up a 265 case and work that under the criminal guidelines. Wainwright said that if a 265 case is opened up first, then the rule is that a 199 *must* be opened as a parallel case. Wainwright called this "a paper exercise – since both are discoverable." Wainwright said that some agents were "dual hatting" – the same agents would sometimes have both files.

Wainwright said that the new guidelines in 2002 allowed for Terrorism Enterprise Investigations (TEIs), where previous guidelines referred to Racketeering Enterprise Investigations (REIs). Wainwright noted that the WFO is doing on TEI for [REDACTED]

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[redacted] in the Washington, DC metropolitan area. He said that they had to get HQ sign-off from the CT Section [of DOJ?]. Wainwright said the TEI was run by the Joint Intelligence Task Force (JITF, the intelligence squad) and that it is not being implemented "all that great." [redacted] 9/11 Law Enforcement Sensitive [redacted] Wainwright noted that Jeff Reinhold of the CT Section and Gordon Crombie (sp?) of the Eastern District of Virginia, are very supportive.

[Note that the distinction between class 199 and class 265 cases is going to go away when the two are merged into class 315 cases.] Wainwright said that post-9/11, there are no walls within the FBI record system and that one agent is working both sides of a case.

Attorney-Client Communications. With respect to monitoring privileged conversations between attorneys and their clients, Wainwright said that, under FISA, the rules allow listening to privileged conversations when the subject has not yet been indicted because the monitoring is done for intelligence purposes. He said there may be new implications now that there is no Wall. Wainwright said that, for protection, they work these conversations so that the AUSAs that review the class 199 cases cannot see the take from the conversations. Wainwright said that there is a bright-line rule that requires that only the FISA Court can modify these rules. Once a subject is indicted, then OIPR is required to approve. Wainwright said this was analogous to prison monitoring rules.

FISA/Title III Standards. Under the old FISA standard, agents had to show probable cause that the person is an agent of a foreign power and that he will use the specific facility (e.g., telephones). In order to get a search warrant under Title III, the FBI has to show probable cause that the target has committed a crime and that he used the specific facility (e.g., telephone) *in furtherance* of the crime (the so-called "dirty phone").

Wainwright said that the minimization standards under FISA and Title III were different

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Wainwright emphasized that "now we can get information under FISA and use it in criminal cases, without going to Title III."

Authority under Different Phases of Investigation (PI v. FFI). During the phase *prior* to a Preliminary Inquiry (PI), what the FBI can do in the CFI/CT context is very limited. Essentially, an agent can do one record check, Wainwright said. On the criminal side, an agent can do more. Wainwright noted that an agent can use all lawful investigative techniques during a full field investigation (FFI) for a criminal case. As a result, nearly all criminal international

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terrorism (IT) cases go directly to a FFI, skipping the PI. For non-criminal cases, agents need to have a PI to question a subject. A PI can be opened when there is a "reasonable suspicion" that the person may be involved in IT or clandestine activity. Under a TEI, there is a perpetual FFI that is renewed on an annual basis.

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Wainwright said the CIA is "essentially useless to us." He said that the FBI gives the CIA everything they want,

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Wainwright said that a threat assessment

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was not shared.

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everything."

"But we give them literally

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Wainwright continued: "If we're giving them too much, someone needs to tell us." He said there is no MOU in place for sharing information.

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Looking forward. Wainwright said that it would be nice to use section 215 of the Patriot Act (regarding library records, etc.) and it will "be nice" to use the roaming wiretaps. He mentioned that they are trying to modify the definition of "financial institution" for the purposed of getting an NSL. He thinks there is a lot of "good stuff" in Patriot Act II. He also said that the FBI would like to get tax information – that they cannot get the information ex parte.

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Exhibit F

MPR04019896

Law Enforcement Sensitive

MEMORANDUM FOR THE RECORD

Event: [REDACTED] (FBI Washington Field Office Special Agent) Interview

Type of event: Interview

Date: July 31, 2003

Special Access Issues: None

Prepared by: Lance Cole

Team Number: 6

Location: FBI Washington Field Office

Participants - Non-Commission: FBI Assistant General Counsel Robert S. Sinton

Participants - Commission: Lance Cole and John Tamm

Personal Background: [REDACTED] joined the FBI on September 3, 1996. She has a B.S. (1993) and an M.S. (1996) in Criminal Justice from the University of Tennessee at Chattanooga. She worked at Blue Cross/Blue Shield in Chattanooga as an internal auditor from 1993 through 1996 while she was earning her Master's degree. She met a retired FBI agent who urged her to apply to the FBI, and she applied as an agent under the "Diversified Program." She went through the interview process, then was hired and assigned to the FBI's Washington Field Office ("WFO") international terrorism squad focusing on radical fundamentalists. Both the assignment to the WFO and to the terrorism squad were "random assignment" and were not [REDACTED] first preferences.

Pre-9/11 Agent Counterterrorism Training: When she joined the WFO terrorism squad, [REDACTED] was assigned to an experienced agent on the squad, [REDACTED] (sp?), for training. In addition, to on-the-job training from [REDACTED] signed up for various in-service training sessions. At that time, there was no set curriculum for new agent counterterrorism training. [REDACTED] took the basic counterterrorism in-service course, a one-week course at Quantico. [REDACTED] could not recall exactly when she took that course, but it was within the first two years of her assignment to the WFO. In addition to the basic counterterrorism course, [REDACTED] took a one-week FISA in-service course within her first three years at WFO. She also completed the required orientation

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program for new agents, which involved work on other squads, such as bank robbery and white collar crime squads.

Pre-9/11 FBI Experience: [REDACTED] stayed in counterterrorism because she liked the work; she did not seek to transfer to another squad. She later took in-service courses on Asset Development and double agents. Both of those were one-week courses offered at Quantico. She also attended a Domestic Terrorism conference in Kansas City, which was helpful because it had guest speakers on topics such as militias. She also has attended a couple of FBI conferences [REDACTED] because she primarily worked on [REDACTED] prior to 9-11. Her [REDACTED] work focused on fundraising and was "totally intelligence gathering" work. [REDACTED] were the major programs on her squad prior to 9-11. Before the 9-11 attacks little work was done by her squad on Usama Bin Laden ("UBL") matters, which was "more of a New York thing" at that time. Her squad had a "control file" on UBL for collection of information, but all UBL information was reported to New York, rather than worked by the WFO. [REDACTED] does not believe that any WFO agents were assigned to UBL matters prior to 9-11.

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New JITF Squad [] understands that all the analysts are being assigned to a single squad, and she believes the supervisor who will manage that squad is good, but the office will still be understaffed. Her squad is not getting the support it needs from its analysts. She has complained to her supervisors in the past, but nothing has been done. She thinks too many of the WFO analysts "are not well trained" and many of them do not have college degrees. While she believes that people who do not have a degree can be good analysts, "they should be better" than they are at present. [] believes the problem with the analysts is "office wide" and not just with her squad. She thinks the

problem may be more severe at the WFO than at other field offices, however. She has spoken with agents from other field offices, and she does not have the sense that they have a similar problem with their analysts.

[] also noted that language specialists in the WFO "are being stretched real thin." The WFO language specialists are "assigned out to other field offices or overseas" and therefore may be unavailable to WFO agents. She understands that it is hard to get the language specialist through the hiring process, but more language specialists have been brought into the office since 9-11.

Post-9/11 FISA Use: [] has used FISA in two cases since 9-11, an Arabic language case and an English language case. The Arabic language case was a UBL matter assigned to her by Headquarters, and people at Headquarters "did it all" in connection with the FISA application. The English language case was related to a parallel intelligence and criminal investigation. [] volunteered that "now they want us to have a parallel 'intell' and criminal investigation" whenever possible. Previously the usual investigation was "purely intelligence gathering without intent to prosecute" the case. [] added that prior to 9-11 agents working intelligence investigations "weren't allowed to have knowledge of criminal matters because of the wall." Now agents are encouraged to open a full field investigation, but still "keep 'intell' and criminal separate" to avoid using classified information in the criminal case. [] said the squad's legal counsel, Duncan Wainwright (sp?), has encouraged her squad's agents to open a criminal case whenever possible. She recalls that "we had a squad meeting and discussed it," and she liked the idea. Now "pretty much all" of her cases have a parallel criminal charge, usually social security fraud but in one case a material support charge.

When asked about changes after 9-11, [] explained that she was on maternity leave during 9-11 and when she came back "everything had changed." The squad was then focusing on UBL and following up on "an unbelievable number of leads." [] and the agents' case loads had increased dramatically. There also was "more urgency in what was being done" in that all allegations, no matter how credible, were investigated.

Post-9/11 Squad Reorganizations: The WFO terrorism squads have been reorganized since 9-11, and agents from criminal squads have been reassigned to CT.

[redacted] believes that the IT-6 and IT-7 squads are mostly comprised of former criminal agents. [redacted] works with the JTTF members, particularly the agents from INS and Customs. She primarily uses the JTTF members "as resources and for referrals."

Post-9/11 Agent Counterterrorism Training: When asked about policy changes since 9-11, [redacted] said that all new CT agents now must complete the basic counterterrorism course, which can now be taken on the Internet. That is the only new training requirement of which [redacted] is aware. She does not know what other training new CT agents receive. In [redacted] view, the biggest post-9-11 change is "the wall coming down" [between intelligence and criminal matters]. She learned of that change when she returned from maternity leave. All the agents "were a little worried" initially because they were given nothing in writing to confirm that change. They were assured by their legal counsel Duncan Wainwright (sp?) that the wall had come down.

In addition to "the wall coming down," agents now can use NSLs in preliminary investigations where prior to 9-11 they could only be used in full field investigations. The agents were informed of this change by Duncan Wainwright. [redacted] has not yet used an NSL in a preliminary investigation because all of her cases are full field investigations.

Using Criminal Process in Intelligence Cases: Another important change after 9-11 was that Assistant United States Attorneys ("AUSAs") "can now review 'intell' files" for potential criminal violations and discuss those files with the agents. AUSAs from the Eastern District of Virginia came over to the WFO and reviewed "intell" files in late 2002 or early 2003. They reviewed "all information in the files," including the FISA information "all the way back to pre-PATRIOT Act cases." Duncan Wainwright participated in the review, as did the WFO squad supervisors, who selected the files for the AUSAs to review. The AUSAs are now willing to prosecute things that they previously would have declined. For example, prior to 9-11 [redacted] could not get AUSAs to prosecute social security fraud offenses related to her investigations, although she tried, while now they are anxious to do so.

Since 9-11 [REDACTED] has opened criminal investigations and used grand jury subpoenas and electronic surveillance "to make criminal cases." She now "has eleven individuals charged who before 9-11 would not have been charged." All of those cases would have been handled as "intell" investigations, with no criminal prosecutions, prior to 9-11.

[REDACTED] is not aware of any changes in the training requirements for experienced CT agents since 9-11. She believes there are now "more training opportunities," such as for training provided by the CIA. She has not participated in those training sessions because "it is hard to get in" and the sessions "fill up fast." She has "requested four, got one" training sessions. She does not know why she did not get into more of the sessions.

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Exhibit 6

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Electronic Records for PJ and Manu					
File Name	Document No.	Classification	# of Pages	Search Term	Description
53845	MFR04017479	S	5	Dar al-Arkam; Virginia Jihad; Timimi; Paintball; Tamimi	9/11 Commission interview with FBI special agent. I sent this out for declassification in 2008 and am still waiting for all agencies to respond.
0000F5CE	RDOJ03003548	S	35	Al-Timimi; Timimi; Tamimi	doc. ID: 199N-DE-89187 serial 262
00062CBF	RDOS04018664	S	5	Tamimi	cable of 12/15/2001
00035F9A	RFBIO3004134	S	256	Al-Timimi; Timimi; BIF; Benevolence International Foundation	Al-Timimi's name in list of telephone contacts by someone else. This is the only mention of him in the document.
00031FAA	RFBIO3009401	S	28	Timimi	mention in Image 25 only; FBI file# 199M-BA-103070
00037CD8	RFBIO3009475	S	49	Timimi; Royer	FBI file# is classified; from Washington Field Office; 10/18/2002
00037D45	RFBIO3009477	S	74	Dar al-Arkam; Masoud Khan; Yong KI Kwon; Yong Kwon; Timimi; Royer; Paintball; Tamimi; BIF; Benevolence International Foundation	4/21/2003 FBI memo from Baltimore Field Office; FBI case file # is classified; mentioned on one page only
00037D90	RFBIO3009478	S	30	Paintball; Tamimi	265A-WF-226192, page 4
0003AFA6	RFBIO3009480	S	70	Tamimi	12/6/2000, pg. 6, from Detroit Field Office; FBI case file # is classified
0003B0DA	RFBIO3009485	S	71	Awlaki; Timimi; Aulaqi	Washington Field Office memo of 10/23/2002; FBI case file # is classified

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File Name	Document No.	Classification	# of Pages	Search Term	Description
0003B151	RFBI03009487	S	59	Al-Hamdi; Al-Timimi; Timimi; Tamimi; Aulaqi	1/2/2003 Washington Field Office memo, FBI case file # is classified
				Dar al-Arkam; Yong Ki Kwon; Yong Kwon; Timimi; Royer; Chapman; BIF; Beneveolence	
0003B18D	RFBI03009488	S	60	International Foundation	3/20/2003 memo and 5/21/2003 Washington Field Office memo, FBI case file # is classified
00037F58	RFBI03009624	S	80	Awlaki; Dar al- Arqam; Timini; Timimi Timimi; Tamimi; BIF; Benevolence International Foundation	page 2 of 2/21/2003 Washington Field Office memo (FBI case file # is classified)
0001C160	RFBI03010185	S	110	International Foundation	1/3/2001, Chicago Field Office memo (FBI case file # is classified)
00019A0D	RFBI03010195	S	37	Timimi; Chapman	pp 13 and 28 of 7/7/2002 FBI memo 199N-SE-85481
0003D712	RFBI03010214	S	136	Al-Hamdi; Timini; Yong Kwon; Timimi; Royer; BIF; Benevolence International Foundation	5/26/2003 FBI memo
0003CFD4	RFBI030104478	S	36	Al-Timimi; Al-Timimi; Timimi; Aulaqi	pg 6 of 3/20/2003 FBI 302-265C-SU-55418, serial 660
0001723C	RFBI03010489	S	55	Timimi	265A-WF-224591, 8/22/2002, pg 7
000320A8	RFBI03010650	S	43	Tamimi	pg 4 of FBI memo from Dallas Field Office; FBI case file # is classified

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File Name	Document No.	Classification	# of Pages	Search Term	Description
0004AA7A	RFBI03011843	S	18	Timimi	pg. 18 of 9/12/2001 FBI memo from the Counterterrorism Division; FBI case file # is classified
0003F099	RFBI03012713	S	81	Al-Timimi; Timimi; BIF	pg 31 of 6/6/2003 FBI memo
0003DBF0	RFBI03013114	S	46	Al-Timimi; Dar al-Arqam; Virginia Jihad; Timimi; Aulaqi	pg 2 of 9/17/2003 FBI memo from the Washington Field Office; FBI case file # is classified
0003DC1F	RFBI03013115	S	55	Dar al-Arkam; Virginia Jihad; Yong Kwon; Timimi; Royer; Chapman; BIF	Washington Field Office memo of 9/27/2003; case file # 315N-WF-217423
0003DC80	RFBI03013117	S	59	Al-Timimi; Timimi; Benevolence International Foundation	pg 36 of 6/6/2003 FBI memo
0005CE8A	RFBI04014773	S	57	Al-Timimi; Timimi	pg 9 of 10/25/1999 FBI memo from Denver Field Office
0005D000	RFBI04015058	S	27	Al-Hamdi; Al-Timimi; Timimi; Royer; Aulaqi; Benevolence International Foundation	FBI 302 dated 6/23/2003, file # 265C-WF-225105
0005E58E	RFBI04016742	S	24	Al-Timimi; Timimi; Benevolence International Foundation; BIF	page 4 of list of disruptions to international terrorist operations since 11 September

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4

File Name	Document No.	Classification	# of Pages	Search Term	Description
005DB4F	RFBIO4016920	S	84	Aatigue; Timimi	pg 15 of FBI memo of 9/12/2003 from the Washington Field Office (FBI case file # is classified); pp 15, 17, 18 of 9/14/2003 FBI memo from Washington Field Office (FBI case file # is classified)
0005DBA4	RFBIO4016921	S	52	Al-Timimi; Dar al-Arqam; Timimi; Aulaqi	7/16/2003 FBI report from Washington Field Office contained on page 9 of 10/31/2003 FBI memo re: case # 315N-WF-221874
0005DC12	RFBIO4017112	S	78	Al-Timimi; Timimi; Aulaqi	pg 5 of FBI memo of 9/27/2002 from Washington Field Office (case file # 265A-WF-224591)
0001DC64	RFBIO	S	16	Tamimi; Aulaqi	FBI case summary memo for case ID: 265A-NY-280350 (PENTTBOM); not your guy
25800	RFBIO3008051	S	339	Tamimi	FBI memo -- not your guy
00036F40	RFBIO3009014	S	331	Tamimi	FBI Legat memo -- not your guy
000392EC	RFBIO3009019	S	86	Timimi	FBI memo -- not your guy
				Tamimi; BIF; Benevolence International Foundation	
000192A7	RFBIO3009758	S	133	Foundation	FBI memo -- not your guy

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C06114447

REDACTED / CLEARED FOR PUBLIC RELEASE

File Name	Document No.	Classification	# of Pages	Search Term	Description
0003CF80	RFBIO3010447	S	83	Tamimi; BIF; Benevolence International Foundation	FBI memo -- not your guy
0003EA6C	RFBIO3010629	S	74	Tamimi	FBI memo -- not your guy
00025D0A	RFBIO3011410	S	36	Tamimi	FBI memo -- not your guy
0003ED1F	RFBIO3011680	S	90	Tamimi	FBI memo -- not your guy
000419BD	RTR04014136	S/SCI	62	Tamimi	not your guy
42526	RTR04014192	TS/SCI	96	Tamimi	not your guy
000349BE		TS	2	Tamimi	not your guy
00041AB1		TS/SCI	9	Tamimi	not your guy
00041E47		TS/SCI	9	Tamimi	not your guy
0002661B	RFBIO3010648	S	28	Al-Hamdi; Al-Timimi	[This is my error: I put the Al-Timimi search term with this document by mistake. The name is not in the document.]

Exhibit H

467

From Paint Ballaz Tue Jun 19 23:03:36 2001
 X-RocketMail: 00000021;R---S-----;0819
 X-Apparently-To: seifchapman@yahoo.com via web4404; 19 Jun 2001 23:03:38 -0700 (PDT)
 X-Track: 1: 40
 Received: from web14802.mail.yahoo.com (216.136.224.218)
 by mta325.mail.yahoo.com with SMTP; 19 Jun 2001 23:03:38 -0700 (PDT)
 Message-ID: <20010620060336.43235.gmail@web14802.mail.yahoo.com>
 Received: from [63.125.145.107] by web14802.mail.yahoo.com; Tue, 19 Jun 2001 23:03:36 PDT
 Date: Tue, 19 Jun 2001 23:03:36 -0700 (PDT)
 From: Paint Ballaz <pballaz@yahoo.com>
 Subject: Fwd: Fw: document 2
 To: AZ <allracesinone@hotmail.com>, Aatique <aatique@yahoo.com>, Abdul Majeed <abdxmaj@hotmail.com>, Abdullah <abdallah_9_99@yahoo.com>, Abu Hareth <ballpaint@hotmail.com>, Ashraf <ashraf@wam.umd.edu>, Fahad <f.r.k@usa.net>, Farhat <farhat@yahoo.com>, Hamad <hammad6@hotmail.com>, Husnain <salafy49@hotmail.com>, Idris <shai07@hotmail.com>, Isma'il <iroyer@cair-net.org>, Khalifa <caliph54@hotmail.com>, Khurum <kshah@gmu.edu>, Yong Kwon <r_kwon@hotmail.com>, Madani <person4444@yahoo.com>, Mahmood <mahmood76@yahoo.com>, Monthana <almothanna@yahoo.com>, Muhammed <abdl_mswr@yahoo.com>, Mustafa <ibnqassim@aol.com>, Nabil <nabil74@yahoo.com>, Rasheed <ironknuckle@prodigy.net>, Seif <seifchapman@yahoo.com>, Shafiq <asantora@gmu.edu>, Shehrazee <shehrazee@hotmail.com>, Tariq <tarek_hammad@hotmail.com>, Waleed <wabdelfattah@hotmail.com>
 MIME-Version: 1.0
 Content-Type: text/plain; charset=us-ascii
 Content-Length: 4128

Please let me know if there are any topics you want answers or proofs forâ€¦

Praying while in a moving car

Praise be to Allaah.

Delaying the prayer past its appointed time is a grave major sin, as Allaah says (interpretation of the meaning):

"So woe unto those performers of salaah (prayers) (hypocrites), who delay their salaah from their stated fixed times." [al-Maa'oon 107:4-5]

According to a report narrated by Muslim, he said:

"The (whole) earth has been made good for me, a means of purification and a mosque (or place of prayer); so wherever a man may be when the time for prayer comes, let him pray wherever he is." (Saheeh Muslim, no. 521)

As far as praying on board means of transportation is concerned, then it is possible to pray there so long as the necessary conditions of prayer are fulfilled, or else one can wait until one gets out of the vehicle. If waiting means that the time for the prayer will pass, then you should pray in the best way that you can. Let us assume, for example, that you are in a car or train where there is no place to pray, you cannot stop and pray at the side of the road, and the time for that prayer is running out. In such a

GOVERNMENT
EXHIBIT

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situation, the Muslim should pray in the best way that he can, even if he is sitting in his seat and even if he is not facing the qiblah, because Allaah says (interpretation of the meaning): "So keep your duty to Allaah and fear Him as much as you can" [al-Taghaabun 64:16], and because the Prophet (peace and blessings of Allaah be upon him) said: "If I have commanded you to do something, do as much of it as you can." (Reported by al-Bukhaari, al-Fath, no. 7288)

An exception to be above is naafil (supererogatory) prayers offered when riding a camel, which is permissible even if one cannot get down or if one is not facing the qiblah. This is known from the report of Ibn 'Umar, who said: "The Prophet (peace and blessings of Allaah be upon him) used to pray when travelling on his camel, no matter which direction it was facing, and he would gesture with his head to indicate the movements of the night prayer, apart from the obligatory prayers, and he would pray with on his camel too." (Reported by al-Bukhaari, 945)

Ibn 'Umar (may Allaah be pleased with him) said: "The Prophet (peace and blessings of Allaah be upon him) used to pray voluntary (nafl) prayers when riding on his camel, no matter what direction it was facing, when he came from Makkah to Madeenah." Then Ibn 'Umar recited this aayah (interpretation of the meaning): "And to Allaah belong the east and the west, so wherever you turn yourselves or your faces, there is the Face of Allaah (and He is High above, over His Throne)" [al-Baqarah 2:115]

Ibn 'Umar said: "It was concerning this that this aayah was revealed." (Reported by al-Tirmidhi, 2883; he said, this is a saheeh hasan hadeeth)

We should not forget to point out here that Muslims living in non-Muslim countries sometimes delay or abandon their prayers for another, completely different, reason, which is that they feel too embarrassed to pray in front of the kuffaar in public or open places, or they are afraid that they will make fun of them and regard them as odd. This is a serious mistake. How can a Muslim feel embarrassed about proclaiming the truth and worshipping openly, hastening to fulfil the command of Allaah at the time when Allaah has said it is to be done? (islam-qa.com)

Seeing a snake or scorpion in front of him while praying

Praise be to Allaah.

He can stop his prayer and kill the snake or scorpion, because the Prophet (peace and blessings of Allaah be upon him) said: "Kill the two black ones during prayer, the snake and the scorpion." (Narrated by the authors of Sunan and classed as saheeh by Ibn Hibbaan). If you can kill it whilst still praying, without moving more than what is regarded as

acceptable, then this is OK and the prayer is still valid.

And Allaah is the source of strength. May Allaah bless our Prophet Muhammad and his family and companions, and grant them peace.

Distance which allows one to shorten prauersd\

The majority of scholars (al-jumhoor) comprising the Maliki's and the Shafie'i's and the Hanbali's have taken the opinion that the recognized distance for one who has undertaken its travel in shortening the prayer is four burud (an antiquated unit of distance), which is two average day's travel by heavily-loaded camels (equivalent to 88.7 km in distance). Among what they have quoted as evidence is what was authentically (sahih) narrated by Ibn Omar and Ibn Abbas (may Allah be pleased with them) that they used to shorten the prayers and break fasting at a distance of four BURUD. This quoted distance is approximate and not exactly limited as per the majority of scholars, and thus what is slightly less is exempted as well.

Some scholars including ibn Qadama and Sheikh ul-Islam Ibn Taymiyya and his pupil Ibn ul-Qayyim have taken the opinion that all that is referred to as travel in practice and in language, and requires preparation of provisions as well as rest and similar things, falls under the licenses of shari'a such as the shortening of the prayer and breaking the fast of Ramadan. Their pretext and justification is the generalization in the wording referring to the shortening of the prayer as it appears in the Qur'an and sunnah, as in the example of surat al-Nisaa', verses 4:101-102:

And in the following hadith:

Al-Tirmidhi, hadith 2960: Ya'la bin Umayyah said: I said to 'Umar ibn al-Khattaab "Verily Allaah has said 'â€| if you shorten your prayers, for fear the unbelievers may attack youâ€|' and now the people feel secure." 'Umar said, "[Indeed] I wondered the same thing you are wondering, so I mentioned it to the Prophet (peace be upon him) and he said '[It is] a charity that Allaah has bestowed upon you so accept His charity.' " (Abu 'Isa said this hadith is hasan sahih.)

Al-Tirmidhi, hadith 453: Umayyah ibn Abdullah ibn Khaalid ibn Asid said to Ibn 'Umar, "How can you shorten the prayer when Allaah the Almighty has said, 'there is no blame on you if you shorten your prayers, for fearâ€|' , " so Ibn 'Umar said, "O son of my brother, verily the Prophet (peace be upon him) came to us when we were misguided, so he taught us, and among what he taught us was that Allaah the Almighty has ordered us to pray two raka'a during travel." (Al-Shu'aithiy said that al-Zuhriy used to relate this hadith via Abdullah ibn Abu Bakr.)

The ayah expresses the permission for shortening the prayer for one who travels without specifically restricting the distance. Thus the Qur'an and sunnah mention "travel" and do not differentiate a particular travel from another, and as such if one travels via air for one hour without any burden or hardship it would be permissible for him or her to shorten the prayer and break the mandatory fast. In fact, this is the most viable opinion, unless for a particularly case there is confusion as to whether it is commonly regarded as travel or not, in which case one falls back to the opinion of the majority of scholars (al-jumhoor) (regarding the minimum required distance).

The Times of Salat

Narrated Abdullah bin Umar (RA): The Prophet (Peace be upon him) said "The time of Zuhr (noon) prayer is when the sun passes the meridian and a man's shadow is of the same length as his height. It lasts until the time of Asr. The time of Asr prayer is as long as the sun has not become yellow (during it's setting). The time of Maghrib prayer is as long as the twilight has not disappeared. The time of Isha is up to midnight. The time of fajr is from the appearance of dawn as long as the sun has not risen. (Muslim)

J-Word

Narrated Uqbah bin Aamir (ra): I heard the Prophet (Peace be Upon Him) recite when he was on the pulpit: "And make ready against them all you can of power, including steeds of war (Planes, Tanks,, etc.) - Surely strength is in shooting, surely strength is in shooting, surely strength is in shooting." (Archery) [Reported Muslim]

Obeying the Ameer

O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination. 4:59

Do You Yahoo!?

Get personalized email addresses from Yahoo! Mail - only \$35 a year! <http://personal.mail.yahoo.com/>

Exhibit I

COPY

1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 03-296-A
	.	
vs.	.	Alexandria, Virginia
	.	February 9, 2004
MASOUD AHMAD KHAN,	.	9:30 a.m.
SEIFULLAH CHAPMAN,	.	
HAMMAD ABDUR-RAHEEM,	.	
CALIPH BASHA IBN ABDUR-RAHEEM,	.	
	.	
Defendants.	.	
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TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME I

APPEARANCES:

FOR THE GOVERNMENT:

GORDON D. KROMBERG, AUSA
DAVID H. LAUFMAN, AUSA
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
and
JOHN T. GIBBS, ESQ.
Counterterrorism Section
Criminal Division
United States Department of Justice
601 D Street, N.W.
Washington, D.C. 20004

FOR DEFENDANT KHAN:

BERNARD S. GRIMM, ESQ.
JENIFER WICKS, ESQ.
Grimm & Wieser
307 G Street, N.W.
Washington, D.C. 20001

(APPEARANCES CONT'D. ON NEXT PAGE)

(Pages 1 - 310)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 I N D E X

2	Opening Statement by Mr. Kromberg:	Page 8
3	Opening Statement by Mr. Grimm:	Page 31
4	Opening Statement by Mr. Cummings:	Page 45
5	Opening Statement by Mr. Amolsch:	Page 58
6	Opening Statement by Ms. Kemler:	Page 67

8 DIRECT CROSS REDIRECT RECROSS

9 WITNESSES ON BEHALF OF
10 THE GOVERNMENT:

10	Bryan Robert Wells	81	96	105
11			97	
			99	
12			101	
13	Det. Leland Wiley	110	116	
14	S.A. Philip J. Phillips	119	128	
15	S.A. Wade Ammerman	137	160	181
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16			182	
17	S.A. Christopher Paul Mamula	196	207	212
18	S.A. John V. Wyman	218	235	
19	Nabil Gharbieh	241		

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21 EXHIBITS

22

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GOVERNMENT'S:

24

No. 1D1	195
2A1	140
2A2	140
2A3	142
2A4	144

25

1 APPEARANCES: (Cont'd.)

2 FOR DEFENDANT CHAPMAN:

JOHN K. ZWERLING, ESQ.
LISA BONDAREFF KEMLER, ESQ.
Zwerling & Kemler, P.C.
108 North Alfred Street
Alexandria, VA 22314

5 FOR DEFENDANT HAMMAD
6 ABDUR-RAHEEM:

WILLIAM B. CUMMINGS, ESQ.
William B. Cummings, P.C.
112 South Pitt Street
Alexandria, VA 22314

8 FOR DEFENDANT CALIPH BASHA
9 IBN ABDUR-RAHEEM:

CHRISTOPHER AMOLSCH, ESQ.
Law Office of Christopher Amolsch
221 South Fayette Street
Alexandria, VA 22314

11 ALSO PRESENT:

S.A. WADE AMMERMAN
S.A. BRIAN BALGAARD
DANIEL GROOMS, SAUSA
SHEILA MYRICK
BOBBY WILLIAMS
S.A. JOHN WYMAN

15 OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

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(APPEARANCES CONT'D. ON NEXT PAGE)

(Pages 1 - 310)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

EXHIBITS (Cont'd.)

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GOVERNMENT'S:

1			
2			
3			
4	No. 2A5		144
5	2A6		114
6	2A7		125
7	2A8		145
8	2A10		154
9			
10	2A11		126
11	2A12		173
12	2A13		127
13	2A15		115
14	2A16		128
15			
16	2A17a		146
17	2A17b		148
18	2A18a		149
19	2A18b		150
20	2A18c		151
21			
22	2A19		152
23	2B2a		230
24	3A8		273
25	3C3		303
	4A1		301
	4C1		303
	5C6		303
	5C7		201
	6C1		303
	7A1		157
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	7A20		227
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	7A26		227
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	7A32		227
	7A36		227
	7A37		227
	7A38		158
	7A39		159
	7A40		227
	7A42		301

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EXHIBITS (Cont'd.)

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GOVERNMENT'S:

No. 7C1	90
7C2 through 7C5	303
8-15	273
8-18	302
8-28	199
8-29	199
8-31	217
8-46	110

1 as I said, if you missed the first round, you've missed it, but
2 in any case, that's the end of the questioning for Agent
3 Ammerman.

4 Thank you. You may step down.

5 MR. GRIMM: Your Honor, may I ask one question?

6 THE COURT: No, no.

7 MR. GRIMM: Thank you.

8 (Witness excused.)

9 THE COURT: All right, call your next witness,
10 Mr. Kromberg.

11 MR. KROMBERG: Judge, at this point, before -- the next
12 witness is going to be Special Agent Chris Mamula, but before we
13 get to that point, I'd like to move in certain exhibits.
14 Government Exhibit 1D1, 1 David 1, constitutes a certification
15 from the custodian of records of Yahoo! providing that the
16 records provided by Yahoo! are, in fact, authentic copies of
17 business records maintained by Yahoo! in the regular course of
18 their business.

19 Because of that certification of 1D1, I'd like to move
20 in Government Exhibits 1D1 through 9, 1D11 through 54, 4A2, 4A3,
21 4G1, and 4G4 through 4G7. The reason I say it all at once now,
22 Judge, is because we haven't been able to get a stipulation on
23 this, and if we have to bring somebody from Yahoo! to talk about
24 this if the certification isn't going to be enough, we'd like to
25 know that earlier in the trial rather than later.

1 THE COURT: All right. Well, let me ask this: These
2 documents, Mr. Kromberg, that you've referenced by number, how
3 did you get them? Are these e-mail messages that were seized
4 from somebody's computer, or did you go to Yahoo! and ask them to
5 do a search? I'm not sure I understand.

6 MR. KROMBERG: Your Honor, these are all e-mails and
7 documents we got directly from Yahoo! either from search warrants
8 at Yahoo! or 2703(d) orders at Yahoo!.

9 Now, I think what the confusion is, Mr. Zwierling is
10 saying that they're not business records of Yahoo! in the sense
11 that what Mr. Chapman -- when Mr. Royer sends of a Bin Laden
12 videotape to Mr. Chapman a link, Yahoo! doesn't know that that's
13 really a Bin Laden videotape, but it really is a business record
14 of Yahoo! that it's a message from Royer to Chapman.

15 That's -- they all have -- this is just for
16 authenticity, Judge. Whether it's relevant or not, it has to be
17 an admission of a defendant, or it has to be a coconspirator
18 statement, but we're mixing apples and oranges by talking about
19 these are not business records of Yahoo!.

20 The fact that the records exist, these messages exist
21 within the records of Yahoo!, it is correct that Yahoo! maintains
22 these documents, these records, and it is a reliable system of
23 finding these records, because Yahoo! has them, and that's all we
24 wanted to show, that these are documents that were within --
25 "documents" is the wrong word -- it's information and messages

1 that were maintained by Yahoo!, and Yahoo! has a duty to maintain
2 this stuff accurately, not generate stuff randomly that says
3 Royer is sending Bin Laden videotapes to Chapman.

4 THE COURT: You have a witness here from Yahoo!?

5 MR. KROMBERG: No, we have not. Yahoo! is in
6 California. We were trying to save -- we thought that the
7 certification saying that these are records that came from Yahoo!
8 records would be sufficient. We don't have to fly someone from
9 Yahoo! to say exactly that.

10 The person from Yahoo! is not going to say, "I know
11 Seif Chapman from a hole in the wall." The person from Yahoo! is
12 going to say, "We look in the bowels of our files, and these are
13 things that are in our files."

14 THE COURT: All right, let me see the certification.

15 MR. KROMBERG: Judge, it's right behind 1D1. 1D1 is
16 the letter, and right behind the letter is a certification --

17 THE COURT: This is from Linda Isley, Senior Compliance
18 Paralegal? Is that what I'm looking at?

19 MR. KROMBERG: Say again, Judge?

20 THE COURT: This is dated February 5, 2004? No, wait a
21 minute.

22 Here it is. It's the affidavit of Linda Isley,
23 correct?

24 MR. KROMBERG: Yes, Judge.

25 MR. CUMMINGS: 4A2.

1 THE COURT: Counsel.

2 MR. CUMMINGS: I'm sorry.

3 MR. KROMBERG: Judge, let me correct the record. When
4 I said these records came from a search of 2703, we also
5 identified them, some of them originally through a FISA, but then
6 when we went to Yahoo! and said can you give us these records,
7 that these are the records of Yahoo!.

8 MR. ZWERLING: Your Honor, if the Court could look at
9 4A2?

10 THE COURT: I'm sorry?

11 MR. ZWERLING: If the Court could look at 4A2?

12 THE COURT: Wait.

13 MR. ZWERLING: I'm sorry.

14 THE COURT: I'm first looking at the Linda Isley
15 affidavit. I mean, again, this is mixing perhaps apples with
16 oranges. The only issue right now is whether somebody is needed
17 from Yahoo! to come into court and say, "I pressed the magic
18 buttons on the computer, and this is what spewed out in response
19 to the government's search warrant." If that's all that is
20 necessary from this witness, her affidavit seems to say that.

21 Now, whether there are problems with just the face of a
22 document such that it shouldn't be entered into evidence is down
23 the road. This is only whether we need the Yahoo! person here.

24 MR. ZWERLING: I understand, Your Honor, but I don't
25 know who else would answer a question like at the bottom of 4A2,

Exhibit J

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From Ismail Royer Mon Dec 31 05:53:35 2001
 X-RocketMail: 00000021;R---S-----;0223
 X-Apparently-To: seifchapman@yahoo.com via web20609.mail.yahoo.com; 31 Dec 2002 05:56:11 -0800 (PST)
 Return-Path: <affairsofmuslims@hotmail.com>
 X-Track: 1: 40
 Received: from dav46.law15.hotmail.com (EHLO hotmail.com) (64.4.22.18)
 by mta304.mail.yahoo.com with SMTP; 31 Dec 2002 05:54:32 -0800 (PST)
 Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC;
 Mon, 31 Dec 2001 05:54:31 -0800
 X-Originating-IP: [195.222.45.243]
 From: "Ismail Royer" <affairsofmuslims@hotmail.com>
 To: <aljazirah@cybermsa.org>
 Subject: Pakistan arrests head of Lashkar-e-Taiba
 Date: Mon, 31 Dec 2001 14:53:35 +0100
 MIME-Version: 1.0
 Content-Type: multipart/alternative;
 boundary="-----_NextPart_000_00DB_01C1920A.EC82AE00"
 X-Priority: 3
 X-MSMail-Priority: Normal
 X-Mailer: Microsoft Outlook Express 5.00.2615.200
 X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200
 Message-ID: <DAV46f73aTnQ51xltxi0000a43a@hotmail.com>
 X-OriginalArrivalTime: 31 Dec 2001 13:54:31.0829 (UTC)
 FILETIME=[AC1D8450:01C19202]
 Content-Length: 8738

This is a multi-part message in MIME format.

-----_NextPart_000_00DB_01C1920A.EC82AE00
 Content-Type: text/plain;
 charset="iso-8859-2"
 Content-Transfer-Encoding: quoted-printable

Assalaamu alaikum,

This bastard Musharaff is not only showing his own profound treachery, =
 weakness and fear of India and the United States, he is making Pakistan =
 itself appear so (just like the Americans mock the Afghans for letting =
 them use them--"You can't buy an Afghan, you can only rent him.") Once =
 you give up your lunch money to the bully, its open season and your =
 dignity is in the toilet. Every single Pakistani and by extension every =
 single Muslim should know that removing and replacing this opportunist, =
 weakling sellout munafiq is a major first step toward restoring the =
 dignity, respect, and strength of the Ummah and Islam.

See also after this article, a statement from Hafiz Saeed on this, a =
 few days old but on topic.

Pakistan arrest head of Lashkar-e-Taiba
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Pakistan arrested Hafiz Mohammed Saeed, the head of the Lashkar-e-Taiba =
 militant organization blamed for carrying out an attack on the Indian =
 parliament, a top security official said.

"He has been arrested for making inflammatory speeches to incite people =
 to violate law and order," the official, requesting anonymity, told AFP.



India has blamed Lashkar and another Pakistan-based militant outfit -- =
Jaish-e-Mohammad -- of carrying out the December 13 attack on the =
parliament complex in New Delhi at the behest of Pakistani military =
intelligence.

Security sources said the arrest was part of the military government's =
recent crackdown on suspected terrorist elements in the country in line =
with its wider commitment to fight international terrorism.

"Pakistan continues with its drive to contain terrorists elements within =
the country as it continues to assist the international coalition =
against terrorism." another security official said.

Lashkar is one of the most powerful militant groups seeking to expel =
Indian troops from the northern third of the disputed Himalayan state of =
Kashmir, which is divided between India and Pakistan.

Analysts believe Saeed's arrest is a significant gesture of Pakistan's =
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Military tensions between the South Asian neighbours have soared since =
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Islamabad has denied any role in the attack but has arrested 60 =
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Last Monday Pakistan froze the bank accounts of Lashkar and another =
militant organization Umma Tameer-e-Nau, which the United States has =
accused of passing nuclear arms data to suspected international =
terrorist Osama bin Laden.

India however has dismissed the moves as "cosmetic".

US President George W. Bush on Friday praised Musharraf for the =
crackdown.

"The president is responding forcefully and actively to bring those who =
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war on terror, it's a civilized government war on terror that we're =
talking about there," Bush said.

"I'm pleased that President Musharraf is responding to the Indian =
request to round up those who would do harm to others and incarcerate =
them, which he did."

However, on Saturday Bush called on Pakistan to do more to "eliminate =
extremists" implicated in the parliament attack.

Lashkar, headquartered near the eastern city of Lahore, is a militant =
wing of the Islamic Dawa tul Irshad organisation that conducts relief =
work and runs schools.

The group has been blamed for other high-profile attacks, including an =
assault on New Delhi's historic Red Fort in December last year.

In the name of Allah, the Most Merciful, the Most Gracious.

Lashkar-e-Taiba's Point Of View About Terrorism

I would like to clarify on a rather sensitive issue concerning =
Lashkar-e-Taiba, one of the organizations of Kashmiri freedom fighters =
battling against Indian occupation forces in the held Kashmir. The aim =
of Lashker-e-Taiba's struggle is that Kashmiri people get the right of =
self-determination like other nations of the world.=20

We are perturbed to learn that some elements in the US government are =
contemplating to declare Lashkar-e-Taiba as a terrorist organization. =
Obviously, misleading information provided by the Indian government has =
influenced those who are supporting this move.=20

We wish to clarify the facts on ground and have the following points to =
make:=20

1. All operations by Kashmiris under Lashkar-e-Taiba's command =
have been carried out against Indian army with the sole purpose of =
protecting the local population from its repression.=20

2. Lashkar-e-Taiba nurses no ill will against Hindus, Sikhs or =
any other community in Indian held Kashmir, and we have never =
purposefully targeted the civilians in Kashmir, whether Hindus, Sikhs or =
other non-Muslims, though accidental civilian casualties during =
encounters with Indian army are a regretful exception.=20

3. We are certain that you would not find even a single incident =
during our armed struggle, wherein civilians of any community were =
directly targeted.=20

4. We have never been involved in any incident of hostage-taking, =
hijacking, kidnapping or other such acts. No such gruesome act can be =
imputed to us. We may differ with the US policy and this is our right =
but we do not mean any harm to any US citizen or property. Nor do we =
believe in carrying out attacks on embassies, or issuing threats against =
anybody, not even the Indian citizens. =20

5. We entertain no malicious intentions against US, British, or =
even Indian citizens, and, therefore, there is no reason for us to =
resort to any form of violence against them. We believe they are =
entitled to peace and tranquility, and protection from violence like any =
other citizen of the world and there is no question of inflicting any =
harm on civilians of any country. Likewise, we have no direct =
confrontation with any nation, Muslim or non-Muslim. Therefore, there is =
absolutely no possibility of our being involved in any activity that may =
endanger US property or citizens either in US or anywhere else in the =
world.=20

6. US State Department or any other country cannot find any =
evidence of our involvement in international terrorism.=20

7. Our activities are focused solely on Kashmir to win freedom for =
Kashmiri people from Indian occupation according to their aspirations. =
We also want to protect them from the brutalities of Indian army.=20

8. Our focus of activity has been on forceful occupation of =

Kashmir by Indian forces against the popular will of people of there. We = believe that under international norms and practice, it is our duty to = provide support to people who are fighting a war of liberation. Even the = UN General Assembly's Resolution on Prevention of Intervention, allows = the same. Likewise, past international practice of US in Afghanistan and = Vietnam supports our view. The only difference is that we are not a = Government arm but comprise of volunteers who feel strongly about the = repression of Kashmiri brothers.=20

9. Further, it must be recalled that Indian-held Kashmir is yet a = disputed territory as recognized by international community in recent UN = Security Council Resolution. Our activities therefore, in the said area, = should not be viewed as intervention in Indian affairs. Our assistance = is restricted to our Kashmiri brothers in Indian held Kashmir.=20

10. We demand that not only Pakistan but all Muslim and non-Muslim = countries that love peace should extend us full support against Indian = army which is tyrannizing innocent Kashmiris. We have the support of our = sympathizers and well-wishers all over the world, who share our vision = of Kashmir's independence. There is must be emphasized that if the = people of East Timor can be granted freedom in a very short span of time = then why not Kashmiris? The underlying reason for this anomaly is that = the people of East Timor were Christians and Kashmiris are Muslims. =20

11. India violated international border in 1971 and attacked East = Pakistan. In 1947 it mounted attacks on the states of Junagarh and = Hyderabad, despite that all these states had announced to join Pakistan = under the provision in the Partition of India Act. Today all communities = in India are suffering its aggression. The so-called biggest democracy = of the world has become hostage to a band of extremist Hindus and this = lifts the veil from the face of "secular India". Neither the Churches of = Christians nor the dignity of Muslims are safe in India. Should such a = country be made a member of Security Council? Such a thing would be = tantamount to putting the security of entire world in jeopardy.=20

12. Indian army was directly involved in the killing of Sikhs in Chati = Singh Pura. Likewise, the massacre of Amarnath Yatris was the handiwork = of Indian army. If an independent commission is established to look into = these incidents, the Lashkar-e-Taiba can easily clarify their position = before the whole world.=20

13. Lashkar-e-Taiba is not merely a military organization; it is = engaged in Da'wah and Jihad. Massive attendance at its gatherings, = congregations and conferences speaks of its popularity. It is a popular = movement, which has full support of peace-loving people. Its hospitals = are rendering exemplary services to people; its schools are eradicating = ignorance in Pakistan by spreading quality education.=20

Having said all this we would like to ask what is the difference between = Afghan Jihad and Kashmir Jihad? Why the US supported one Jihad so = overwhelmingly, and why it is condemning the other Jihad so vehemently? = Do its standards change so easily when it comes to its interests? It = supported Jihad in Afghanistan because it was against USSR, whereas it = is condemning Jihad-e-Kashmir because of its ties with India. Then a = very important question, why the US attacked the innocent people of = Iraq, why it rained Cruise missiles on Afghanistan and Sudan? Do its = laws against terrorism not apply to all such acts of aggression? As far = as we are concerned, we are fighting for our freedom.=20

Prof. Hafiz Muhammad Saeed
Amir Lashkar-e-Taiba

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<DIV><FONT face=3DArial size=3D2>This bastard Musharaff is not&nbsp;only =
showing his=20
own profound treachery, weakness and fear of India and the United =
States, he is=20
making Pakistan itself appear so (just like the Americans mock the =
Afghans for=20
letting them use them--"You can't buy an Afghan, you can only rent =
him.") Once=20
you give up your lunch money to the bully, its open season and your =
dignity is=20
in the toilet. Every single Pakistani and by extension every single =
Muslim=20
should know that removing and replacing this&nbsp;opportunist, weakling =
sellout=20
munafiq&nbsp;is a major first step toward restoring the dignity, =
respect, and=20
strength of&nbsp;the Ummah and Islam.</FONT></DIV>
<DIV><FONT face=3DArial size=3D2></FONT>&nbsp;</DIV>
<DIV><FONT face=3DArial size=3D2>See also after this article, a =
statement from=20
Hafiz&nbsp;Saeed&nbsp;on this, a few days old but on =
topic.</FONT></DIV>
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the name of Allah, the Most Merciful, the Most Gracious<SPAN=20

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<H3><FONT =
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Hafiz Muhammad Saeed

Amir =

Lashkar-e-Taiba

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466

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 by mta542.mail.yahoo.com with SMTP; 26 Jun 2001 06:46:40 -0700 (PDT)
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 Tue, 26 Jun 2001 06:46:40 -0700
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 To: "Affairs of Muslims" <abuhamza20@yahooogroups.com>
 Cc: <amir@eisa.net.au>, "Saifullah Chapman" <seifchapman@yahoo.com>, "hammad
 abdur-raheem" <hammad6@hotmail.com>, "saff" <saff@bih.net.ba>
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Bin Laden Special Training Camps [Video, Arabic]

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[illegible]

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From Abu Hamza Thu Apr 19 12:12:06 2001
 X-RocketMail: 00000021;R---S-----;0851
 X-Apparently-To: seifchapman@yahoo.com via web4401
 Return-Path: <affairsofmuslims@hotmail.com>
 X-Track: 1: 40
 Received: from dav33.law15.hotmail.com (EHLO hotmail.com) (64.4.22.90)
 by mta229.mail.yahoo.com with SMTP; 19 Apr 2001 12:14:04 -0700 (PDT)
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 Thu, 19 Apr 2001 12:14:04 -0700
 X-Originating-IP: [64.36.82.26]
 From: "Abu Hamza" <affairsofmuslims@hotmail.com>
 To: "Affairs of Muslims" <abuhamza20@yahoogroups.com>
 Subject: CHECHNYA: Very nice videos
 Date: Thu, 19 Apr 2001 15:12:06 -0400
 MIME-Version: 1.0
 Content-Type: multipart/alternative; boundary="-----
 =_NextPart_000_0688_01C0C8E3.18AA01A0"
 X-Priority: 3
 X-MSMail-Priority: Normal
 X-Mailer: Microsoft Outlook Express 5.50.4133.2400
 X-MimeOLE: Produced By Microsoft MimeOLE V5.50.4133.2400
 Message-ID: <DAV33kLQ8aZRhQdOgl40000017e@hotmail.com>
 X-OriginalArrivalTime: 19 Apr 2001 19:14:04.0371 (UTC)
 FILETIME=[E6174230:01C0C904]
 Content-Length: 846

This is a multi-part message in MIME format.

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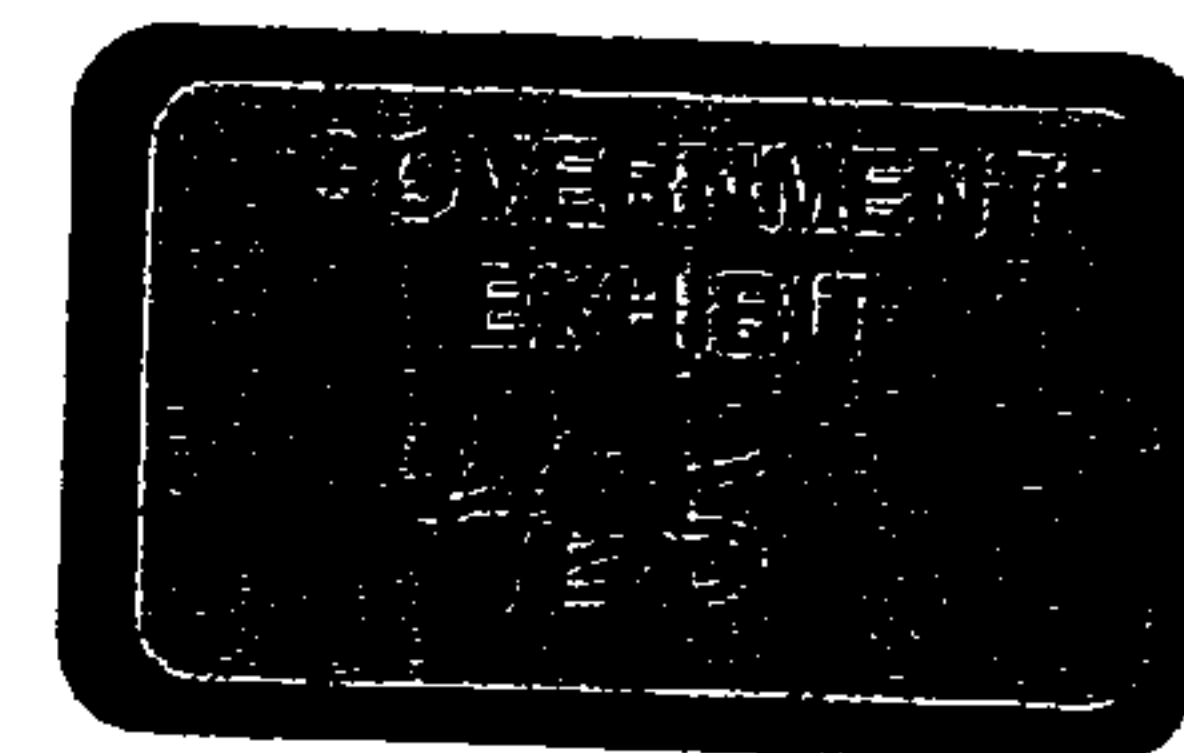
<http://www.kavkaz.org/english/media/video.htm>

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 charset="iso-8859-1"
 Content-Transfer-Encoding: quoted-printable

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</HEAD>
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org/english/media/video.htm</A></FONT></DIV></BODY></HTML>
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-----=_NextPart_000_0688_01C0C8E3.18AA01A0--

From nabil@gharbieh.com Tue Apr 24 11:57:37 2001
 X-RocketMail: 00000021;R---S-----;1346
 X-Apparently-To: seifchapman@yahoo.com via web4404
 Return-Path: <nabil@gharbieh.com>
 X-Track: -10
 Received: from smtp-hub.mrf.mail.rcn.net (207.172.4.107)
 by mta456.mail.yahoo.com with SMTP; 24 Apr 2001 11:59:13 -0700 (PDT)



Received: from smtp02.mrf.mail.rcn.net ([207.172.4.61])
 by smtp-hub.mrf.mail.rcn.net with esmtp (Exim 3.16 #5)
 id 14s81k-0001Fz-00; Tue, 24 Apr 2001 14:59:08 -0400
 Received: from 207-172-52-75.s75.tnt1.brd.va.dialup.rcn.com ([207.172.52.75]
 helo=b6p9i7)

by smtp02.mrf.mail.rcn.net with smtp (Exim 3.16 #5)
 id 14s81j-0006T2-00 ; Tue, 24 Apr 2001 14:59:07 -0400

Message-ID: <006201c0ccf0\$704596c0\$4b34accf@b6p9i7>

From: <nabil@gharbieh.com>

To: "hammad abdur-raheem" <hammad6@hotmail.com>,
 "Abdullah Zakaria" <allracesinone@hotmail.com>,
 "AbuAsiyah" <abuasiyah@erols.com>,
 "Allen Shafiq" <asantora@gmu.edu>,
 "Br. Ashraf" <mujahid10@hotmail.com>,
 "Br. Farhat" <farhat@yahoo.com>,
 "Br. Khalif" <caliph54@hotmail.com>,
 "Haroon Zakaria" <hzikria@aol.com>,
 "Haroun Mateen" <harunmateen1@yahoo.com>,
 <hshakur@hotmail.com>,
 "Husanain Awan" <husanain@paintballers.intranets.com>,
 "Ibrahim Y" <yemen77@hotmail.com>,
 "Idris Suratt" <shai07@hotmail.com>,
 "Nader" <nkalifa@yahoo.com>,
 "Omar M" <omarmadani@yahoo.com>,
 "Omer S" <oyem@hotmail.com>,
 "Saifullah Chapman" <seifchapman@yahoo.com>,
 "Yung Kwon" <r_kwon@hotmail.com>

Subject: USS LIBERTY

Date: Tue, 24 Apr 2001 14:57:37 -0400

MIME-Version: 1.0

Content-Type: multipart/alternative;

boundary="-----_NextPart_000_005F_01C0CCCE.E6F1A7E0"

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X-MSMail-Priority: Normal

X-Mailer: Microsoft Outlook Express 5.00.2615.200

X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200

Content-Length: 818

This is a multi-part message in MIME format.

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Content-Type: text/plain;

charset="iso-8859-1"

Content-Transfer-Encoding: quoted-printable

<http://www.halcyon.com/jim/ussliberty/>

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Content-Type: text/html;

charset="iso-8859-1"

Content-Transfer-Encoding: quoted-printable

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</HEAD>

<BODY bgColor=3D#ffffff>

<DIV><A=20

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m/ussliberty/</DIV></BODY></HTML>

-----=_NextPart_000_005F_01C0CCCE.E6F1A7E0--

Exhibit K

COPY

1793

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 03-296-A
	.	
vs.	.	Alexandria, Virginia
	.	February 19, 2004
MASOUD AHMAD KHAN,	.	10:00 a.m.
SEIFULLAH CHAPMAN,	.	
HAMMAD ABDUR-RAHEEM,	.	
CALIPH BASHA IBN ABDUR-RAHEEM,	.	
	.	
Defendants.	.	
	.	
.	.	
.	.	
.	.	
.	.	

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME VIII

APPEARANCES:

FOR THE GOVERNMENT:	GORDON D. KROMBERG, AUSA
	DAVID H. LAUFMAN, AUSA
	United States Attorney's Office
	2100 Jamieson Avenue
	Alexandria, VA 22314
	and
	JOHN T. GIBBS, ESQ.
	Counterterrorism Section
	Criminal Division
	United States Department of Justice
	601 D Street, N.W.
	Washington, D.C. 20004
FOR DEFENDANT KHAN:	BERNARD S. GRIMM, ESQ.
	JENIFER WICKS, ESQ.
	Grimm & Wieser
	307 G Street, N.W.
	Washington, D.C. 20001

(APPEARANCES CONT'D. ON NEXT PAGE)

(Pages 1793 - 2087)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR DEFENDANT CHAPMAN:

JOHN K. ZWERLING, ESQ.
LISA BONDAREFF KEMLER, ESQ.
Zwerling & Kemler, P.C.
108 North Alfred Street
Alexandria, VA 22314

5 FOR DEFENDANT HAMMAD
6 ABDUR-RAHEEM:

WILLIAM B. CUMMINGS, ESQ.
William B. Cummings, P.C.
112 South Pitt Street
Alexandria, VA 22314

8 FOR DEFENDANT CALIPH BASHA
9 IBN ABDUR-RAHEEM:

CHRISTOPHER AMOLSCH, ESQ.
Law Office of Christopher Amolsch
221 South Fayette Street
Alexandria, VA 22314

11 ALSO PRESENT:

S.A. WADE AMMERMAN
S.A. BRIAN BALGAARD
DANIEL GROOMS, SAUSA
SHEILA MYRICK
BOBBY WILLIAMS
S.A. JOHN WYMAN

15 OFFICIAL COURT REPORTER:

ANNELEISE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

18

19

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22

23

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25

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
--	---------------	--------------	-----------------	----------------

WITNESSES ON BEHALF OF
THE GOVERNMENT:

Yong Ki Kwon (Resumed)		1798 1808	1810	1832 1836 1840
Hany Iskandar	1845	1864 1866		
S.A. John Wyman (Recalled)	1877	2015 2021 2038 2059 2075	2079	2084

EXHIBITS

	<u>STRICKEN</u>	<u>RECEIVED</u>
--	-----------------	-----------------

GOVERNMENT'S:

No. 3C4		1868
3C4a		1868
3C4b		1868
4A6a		1863
4A6b		1863
4C5		1868
4C7		1869
5A1		2013
5A2		2012
5A7	1892	
5C1		2013
5C2		1869
5C3		1869
5C4		1869
5C5		1869
5C10a		1870
5C10b		1870
5C11		1870
5C12		1869

EXHIBITS (Cont'd.)RECEIVEDGOVERNMENT'S:

1		
2		
3	<u>GOVERNMENT'S:</u>	
4	No. 5F3	2012
	6A2	2012
5	6C2	1869
	7A1	1862
6	7A1a	1862
7	7A15	1863
	7A20	1862
8	7A20a	1862
	7A38	1863
9	7A38a	1863
10	7A39	1863
	7A39a	1863
11	7H13	1867
	7H19a	1922
12	8-19	1868
13	8-22	1868
	8-23	1869
14	8-27	1869
	8-30	1870
15		
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25		

1 Q. Okay. And the other one that was later sold to Nabil was
2 really the testimony, was it not, that it was sold to Nader,
3 "Nader"?

4 A. No. I think I actually have -- I think 6A2 --

5 Q. That's the receipt.

6 A. -- is the receipt for the --

7 Q. I'm sorry, wasn't the testimony of Mr. Nabil that about six
8 months prior to the creation of that bill of sale, Seif Chapman
9 had given the gun to his cousin at his request?

10 A. I don't remember exactly what he said about that.

11 Q. All right.

12 THE COURT: We'll get back to it. Go ahead.

13 MR. ZWERLING: Thank you, Your Honor.

14 Q. Page 13, December 18, 2000, the weapon that was sold to
15 Mr. Al-Hamdi in December of 2000, do you recall Mr. Al-Hamdi
16 saying that he bought it to go hunting?

17 A. In his testimony?

18 Q. Yes. Also in his debriefs, if I'm not mistaken.

19 A. I mean, I don't remember his testimony whether he said go
20 hunting or not, but he certainly has said at times that was one
21 of the reasons that he wanted to buy it -- was the reason he
22 wanted to buy it.

23 Q. Was to go hunting?

24 A. Right.

25 Q. Okay. And if you would look at page 14, March 5, is that

1 the first time anybody -- you have any record that anybody's
2 buying paintball equipment or, I guess, paintballs, Pev's
3 paintballs, the first time they bought paintballs in 2001, the
4 beginning of their paintball season?

5 A. Again, all we have in here are Kwon's and Hamdi's. They
6 were the main purchasers of paintball equipment.

7 Q. All right.

8 A. I know there were some by other, other people. I think
9 that's the first one in this time line, but I just want to point
10 out that it is limited to the two major purchasers.

11 Q. Well, as to what is in evidence in this case, this is the
12 only evidence --

13 A. Okay.

14 Q. This is the earliest evidence of paintballs being bought in
15 2001, correct?

16 A. Right.

17 Q. And then six days later, March 11, is when they were playing
18 paintball and on the way back, there was a car accident, correct?

19 A. Correct.

20 Q. Now, you have in here that -- I'm not going to argue about
21 your use of the word "conspirators," but I would point out to the
22 Court we're not conceding it by not objecting to it. That's for
23 the Court to determine.

24 But you used "practiced military tactics using
25 paintball equipment." They told you they played paintball on

1 that day, didn't they? Isn't that how they worded it?

2 A. No. I've been told, I've been told a variety of things
3 about what they were doing at paintball, but the specific
4 language that went into this bullet was, I guess was taken as a,
5 as an act out of the -- the language itself was taken as an act
6 out of the indictment as far as a time line, and so I was trying
7 to tie it to the evidence.

8 Q. But really as far as being a summary, the summary is that
9 this is when they went there and they played paintball?

10 A. Correct.

11 Q. All right.

12 THE COURT: I've changed it for my own edification, all
13 right?

14 MR. ZWERLING: Thank you, Your Honor. I appreciate it.

15 Q. And you're aware that Nabil and Hamdi both testified after
16 the accident, that was the last time Mr. Chapman played
17 paintball?

18 A. I don't know that that's the case.

19 Q. You weren't here for their testimony?

20 A. I've been here, but I don't remember whether they said that
21 was the last time or not.

22 Q. If they had -- the next thing I want to point to is April
23 15, where it says that Chapman played paintball with Mr. Wells
24 and others. You are aware that Mr. Wells was never asked to
25 physically identify who it was he thought was Seif Chapman in the

1 courtroom?

2 A. Whether he identified Seif Chapman or not?

3 Q. As this person.

4 A. Or whether he just said it? I don't remember him
5 identifying him.

6 Q. All right.

7 A. I don't remember whether that happened.

8 Q. All right. And, and you say you don't recall Nabil's
9 testimony and Al-Hamdi's testimony about the accident being the
10 last time Seif Chapman played?

11 A. I remember them discussing the accident. I don't remember
12 the specific point about whether Seif was there afterwards.

13 Q. Okay. Page 20, December 31, what do you mean by "recorded
14 conversation"?

15 A. That is -- it's language we use to -- that was obtained off
16 of a FISA that's now declassified, as opposed to a search
17 warrant. So it was a recorded -- it's a recorded conversation
18 between them, as opposed to a search on an e-mail. So it's a
19 recorded conversation.

20 Q. The e-mail was recorded?

21 A. Correct.

22 Q. Okay. It was not voice mail?

23 MR. KROMBERG: And if I could make a suggestion?

24 THE COURT: Yes.

25 MR. KROMBERG: That we just cross out "recorded

1 conversation"?

2 MR. ZWERLING: Sure. I just was a little confused.

3 Thank you.

4 Q. And it was from Royer, sent to affairsofmuslims@hotmail, and
5 then sent on to other people, including Seif Chapman, correct?

6 A. I believe the way it -- maybe I can look at the exhibit, but
7 I think the way, I think the way it worked was -- well, maybe we
8 could look -- if I can look at the exhibit?

9 Q. All right. 4G4.

10 THE COURT: All right.

11 BY MR. ZWERLING:

12 Q. Do you see where it says "Apparently-To"?

13 A. Right. It appears that Royer sent this to the Al-Jazeera
14 mailing list, and Chapman is part of that mailing list, and
15 that's why he got it.

16 Q. And that's what I was asking.

17 A. Right.

18 Q. Thank you.

19 March 7, just a little down -- March 27, '02, this is
20 the only time I noticed you using a qualifier, and in the
21 summary, I'm wondering whether it's appropriate to
22 use "individual using the name Pal Singh." Every place else you
23 say Pal Singh did this, Pal Singh did that, or So-and-so
24 did this.

25 A. I didn't want to keep saying "individual using the name" on

Exhibit L

Untitled Document

~~SECRET~~

Page 1 of 1

~~SECRET - NOFORN - ORCON - X1~~
FISA Derived

X-Apparently-To: seitchapman@yahoo.com via web4401

Return-Path: <affairsofmuslims@hotmail.com>

X-Track: 1: 40

Received: from dav33.law15.hotmail.com (EHLO hotmail.com) (64.4.22.90) by mta229.mail.yahoo.com with SMTP; 19 Apr 2001 12:14:04 -0700 (PDT)

Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC; Thu, 19 Apr 2001 12:14:04 -0700

X-Originating-IP: [64.36.82.26]

From: "Abu Hamza" <affairsofmuslims@hotmail.com>

To: "Affairs of Muslims" <abuhamza20@yahoogroups.com>

Subject: CHECHNYA: Very nice videos

Date: Thu, 19 Apr 2001 15:12:06 -0400

X-Priority: 3

X-MSMail-Priority: Normal

X-Mailer: Microsoft Outlook Express 5.50.4133.2400

X-MimeOLE: Produced By Microsoft MimeOLE V5.50.4133.2400

Message-ID: <DAV33kLQ8aZRhQdOgl40000017e@hotmail.com>

X-OriginalArrivalTime: 19 Apr 2001 19:14:04.0371 (UTC) FILETIME=[E6174230:01C0C904]

DECLASSIFIED BY 60267NLS/BAW
ON 11/13/04

STAU Comment: Plain Text version

<http://www.kavkaz.org/english/media/video.htm>

STAU Comment: HTML version

<http://www.kavkaz.org/english/media/video.htm>

STAU Comment: MIME Postfix

From nabil@gharbieh.com Tue Apr 24 11:57:37 2001

STAU Comment: End Postfix

11/13/04
CLASSIFIED BY: 60267NLS(UC)/BAW
REASON: 1.5 (1)
DECLASSIFY ON: X-13-2029~~SECRET - NOFORN - ORCON - X1~~
FISA Derived~~ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE~~GOVERNMENT
EXHIBIT

4G5

03-296-A

(X)

Untitled Document

Page 1 of 1

~~SECRET~~
~~SECRET - NOFORN - ORCON - X1~~
 FISA Derived

X-Apparently-To: seifchapman@yahoo.com via web4406; 26 Jun 2001 06:46:40 -0700 (PDT)

X-Track: 1: 40

Received: from dav28.law15.hotmail.com (EHLO hotmail.com) (64.4.22.85) by

mta542.mail.yahoo.com with SMTP; 26 Jun 2001 06:46:40 -0700 (PDT)

Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC; Tue, 26 Jun 2001 06:46:40 -0700

X-Originating-IP: [64.36.82.26]

From: "Abu Hamza" <affairsofmuslims@hotmail.com>

To: "Affairs of Muslims" <abuhamza20@yahoogroups.com>

Cc: <amir@eisa.net.au>, "Saifullah Chapman" <seifchapman@yahoo.com>, "hammad abdur-raheem" <hammad6@hotmail.com>, "saff" <saff@bih.net.ba>

Subject: On-line video of Bin Ladin training camp on Al-Jazeera

Date: Tue, 26 Jun 2001 09:43:52 -0400

X-Priority: 3

X-MSMail-Priority: Normal

X-Mailer: Microsoft Outlook Express 5.50.4522.1200

X-MimeOLE: Produced By Microsoft MimeOLE V5.50.4522.1200

Message-ID: <DAV28ljF9Q0Z3FZLvGV000033a6@hotmail.com>

X-OriginalArrivalTime: 26 Jun 2001 13:46:40.0657 (UTC) FILETIME=[6D9D6010:01C0FE46]

DECLASSIFIED BY 60267NLS/BAW
 ON 11/13/04

STAU Comment: Plain Text version

Bin Laden Special Training Camps [Video, Arabic]

URL: http://www.aljazeera.net/mritems/streams/video/2001/6/20/1_40521_1_12.ASF

STAU Comment: HTML version

Bin Laden Special Training Camps [Video, Arabic]

URL: http://www.aljazeera.net/mritems/streams/video/2001/6/20/1_40521_1_12.ASF

STAU Comment: MIME Postfix

From affairsofmuslims@hotmail.com Wed Jun 27 16:39:06 2001

STAU Comment: End Postfix

11/13/04
 CLASSIFIED BY 60267NLS/BAW
 REASON: 1.5 (1)
 DECLASSIFY ON: 11/13/2029

~~SECRET - NOFORN - ORCON - X1~~
 FISA Derived

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED EXCEPT
 WHERE SHOWN OTHERWISE

GOVERNMENT
 EXHIBIT

4G6
 03-296-A